

Commonwealth of Massachusetts

Department of Telecommunications & Energy



December 2002

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The Massachusetts Department of Telecommunications and Energy has regulatory authority for a broad and significant portion of the Massachusetts economy. The Department has prepared this transition briefing to help the incoming Romney Administration evaluate the role of the DTE in the Commonwealth's government and its economy.

The DTE is an executive branch agency, overseen by a five-member Commission appointed by the Governor. According to statute, one member must have a background in energy issues, another in telecommunications, one in cable television, and one commissioner must have a background in consumer protection and advocacy. The governor designates one of the commissioners as chairman.

The Department of Telecommunications and Energy is commonly referred to as the state's public utility commission. It has a dual role of ensuring public safety and ensuring that regulated industries provide quality service at reasonable rates. Public safety, particularly in the natural gas pipeline and transportation industries, is the DTE's most important responsibility. The safety and security of our utility and transportation infrastructure have taken on an increased level of importance at the DTE since the terrorist attacks of September 11, 2001.

The DTE's other responsibilities include establishing rates and ensuring service quality for the investor-owned electric power, natural gas, telecommunications, and water industries. The DTE also plays a role in setting rates in the transportation, water, and cable television industries. The DTE does not regulate the rates or services of other public agencies, such as municipal electric companies or water authorities.

The energy and communications industries are in the midst of revolutionary changes in technology, market structure, and regulatory policy. Some of these changes are driven by state law, particularly in the electric industry. Over the past six years, the DTE has devoted significant efforts to establishing structural conditions and economic policies that allow for the development of efficient competitive markets, wherever they are feasible.

Federal law and regulation are driving many of the changes in the energy and communications industries. In some cases, federal actions have reduced the discretion of the DTE in important respects. To protect Massachusetts customers' interests, the DTE has increased its involvement in the federal policy-making process, both individually and as an active participant in the New England Conference of Public Utility Commissioners and the National Association of Regulatory Utility Commissioners.

The following pages contain the Department's organizational chart and an historical timeline of the Department's development. The remainder of the report summarizes the responsibilities of the various staff divisions within the DTE, and provides details about the day-to-day functions of the agency.

Historical Timeline of Utility Regulation in Massachusetts

Public Service Commission

- 1804 Legislation passed to regulate and fix turnpike company rates; later expanded to regulate railroads
- 1869 Board of Railroad Commissioners established
- 1906 Expansion of authority to include steamship companies
- 1913 Reorganization changing the three-member Board of Railroad Commissioners into five-member, part-time Public Service Commission

Gas and Electric Commission

- 1885 Board of Gas Commissioners established
- 1889 Expansion of authority to include electric companies; renamed the Board of Gas and Electric Light Commissioners
- 1891 Authority extended to municipal gas and electric companies
- 1914 Investor-owned water companies regulated

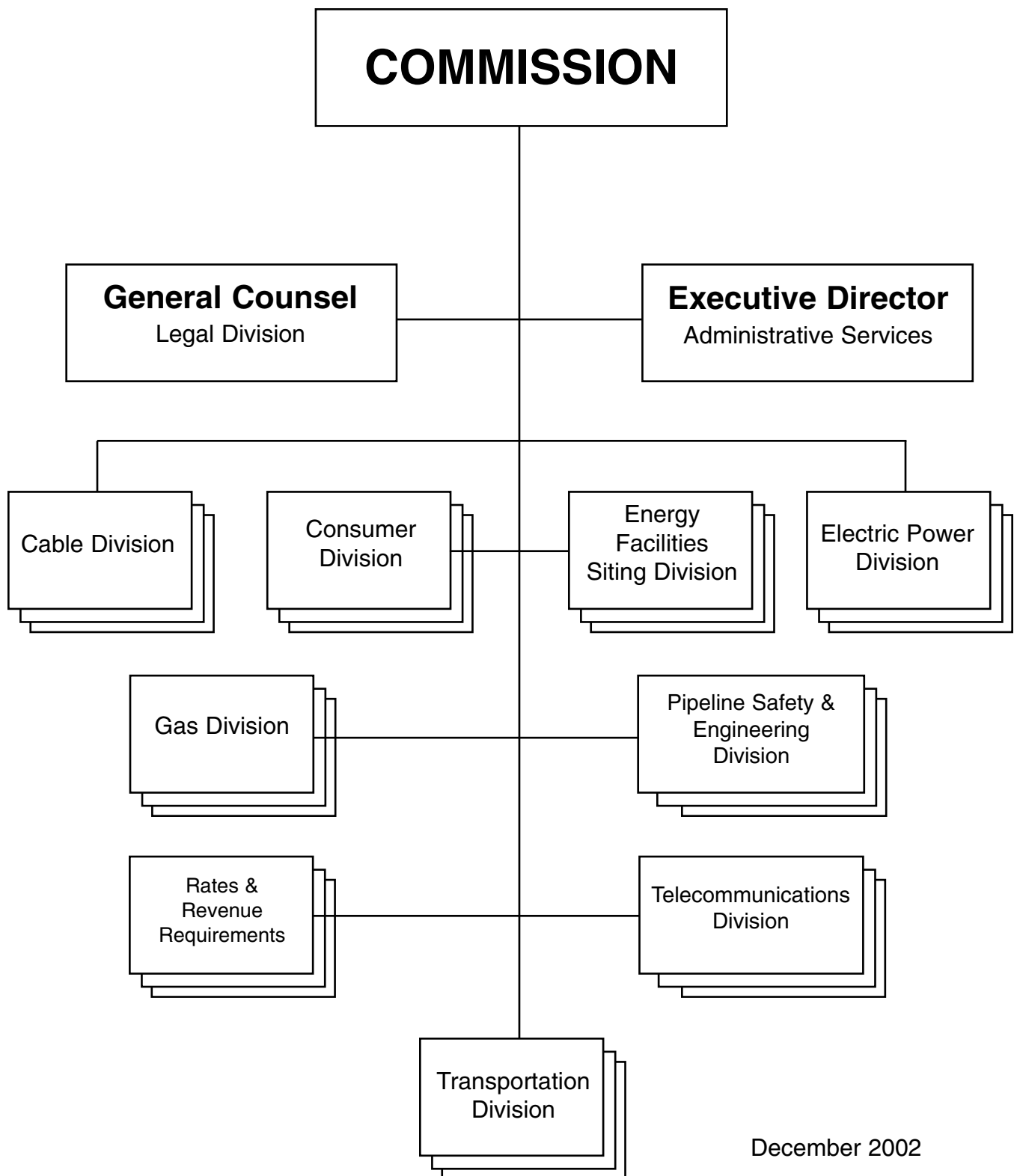
Department of Public Utilities

- 1919 Consolidation of Public Service Commission and Board of Gas and Electric Commissioners into the Department of Public Utilities; authority to regulate the rates of gas and electric companies
- 1958 Commission expanded to seven part-time members
- 1975 Reorganization of Commission to three full-time members
- 1981 Fuel Monitoring Bureau established to oversee electric company fuel purchases
- 1992 Energy Facilities Siting Council merged with Department of Public Utilities

Department of Telecommunications & Energy

- 1998 Department renamed the Department of Telecommunications & Energy; the former Cable Television Commission incorporated; Commission expanded from three to five full-time members

Organization Chart



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Telecommunications Division

The Telecommunications Division provides technical support to the Commission in the regulation of the \$3 billion telecommunications industry in Massachusetts. The industry is made up of local exchange carriers, interexchange carriers, operator service companies, and pay-telephone companies. The mission of the Division is to ensure that telecommunication companies provide their customers with the most reliable telecommunications resources at the lowest possible cost.

The Telecommunications Division's major responsibilities are to:

- Review new registrations from companies seeking to provide telecommunications services in Massachusetts;
- Review individual tariff filings that would implement new service offerings or change the rates, terms or conditions of existing service offerings;
- Monitor the quality of service provided by the state's incumbent local exchange carrier, Verizon;
- Analyze major federal regulatory decisions to evaluate their impact on state regulation of the telecommunications industry;
- Enforce Department regulations and policies;
- Revise existing policies and develop new policies in response to new technologies and market conditions; and
- Explain Department regulations and policies to telecommunications companies, public officials, and consumers.

Regulatory Framework

The breakup of AT&T in 1985 led to major changes in the telecommunications industry and how it is regulated. Rapid growth and evolution in the industry challenge the Department to maintain a level of oversight that effectively mitigates market power and promotes economic efficiency, while encouraging technological innovation and sensitivity to customer needs.

The Department has jurisdiction over telecommunications services that originate and terminate within each of Massachusetts' two federally-designated "Local Access and Transport Areas." (LATAs). The Federal Communications Commission (FCC) regulates services provided between customers in different LATAs, as well as interstate and international services.

Retail Services

Following the breakup of AT&T, the Department classified both AT&T and New England Telephone (now Verizon) as "dominant" carriers with market power, subject to traditional ratemaking standards for ensuring that prices are just and reasonable. It has classified all other carriers that have since entered the market as "nondominant," signifying that competitive pressures are sufficient to ensure that their rates are just and reasonable. Over the years, the Department has allowed AT&T and Verizon to reclassify some of their services as "sufficiently competitive" to warrant the same treatment for those particular services as is

applied to nondominant carriers. In 1996, the Department reclassified AT&T as a nondominant carrier for all the services it offers.

To reduce barriers to market entry and encourage competition for telecommunications service in Massachusetts, the Department has streamlined its registration procedures for companies wishing to do business as carriers here. Previously, the Department conducted an investigation into the financial, managerial, and technical ability of a carrier to offer service. The Department now permits carriers to offer service based simply on the submission of a Statement of Business Operations and a tariff. By streamlining the entry process, the Department has freed resources and staff time for other responsibilities.

Wholesale Services

Apart from building their own facilities to serve customers, carriers who wish to compete in the retail telecommunications market have two modes of entry availability to them. One of these is to lease unbundled network elements from the "incumbent" local exchange carrier (Verizon) and provide service over this leased network. The Department has authority over Verizon's wholesale provision of unbundled network elements, ensures that they are provided in a non-discriminatory manner, and regulates the rates at which they are leased.

In 2002, the Department established new rates for Verizon's wholesale unbundled network elements and interconnec-

Telecommunications Division

tion. The Telecommunications Division developed these rates by applying an FCC cost standard, known as Total Element, Long-Run, Incremental Cost (TELRIC), which calculates the cost for an efficient carrier to provide unbundled network elements and interconnection in a competitive wholesale market. The Department's comprehensive 18-month investigation was the its second review of TELRIC-based rates for Verizon.

The other way a carrier can enter the market is to purchase a service from another carrier at a predetermined wholesale discount rate, then brand the service with its own name and resell it. The Telecommunications Division develops the wholesale discount rate, pursuant to FCC methodology.

Payphone Providers

Many companies in addition to Verizon own and operate payphones in Massachusetts. In a 1986 Order, the Department held that all payphones must have labels clearly identifying the owner/operator of the phone, and must provide free access to 911 and directory assistance. The Department ensures that Verizon provides the lines necessary to provide payphone service on a non-discriminatory basis to all companies seeking to offer the service.

Division Responsibilities

Review of New Registrations

Telecommunications carriers wishing to do business in Massachusetts must file a Statement of Business Operations and a tariff. The Statement includes a general description of the services to be offered by the carrier, contact information for customers who need to reach the carrier with questions or complaints, and a statement that the company has made all appropriate federal and state income tax filings and paid all income taxes.

Review of Original and Amended Tariff Filings

The Telecommunications Division reviews approximately 60 tariff filings in an average month, including new tariffs and amendments to existing tariffs. Competitive carriers are free to determine prices and service offerings based on what the market will bear. The Division reviews competitive carriers' tariffs to make sure they do not contain any terms or provisions that are in violation of Department policy (e.g., a carrier cannot offer service on the condition that a customer agrees not to contest any charges), but otherwise generally allows new tariffs to become effective as filed. Because Verizon is the incumbent local exchange

carrier, its tariffs receive greater scrutiny than those of competitive local exchange carriers. The Division reviews Verizon's tariffs to ensure that its prices are just and reasonable.

Monitoring of Verizon's Service Quality

Since the passage of the Telecommunications Act of 1996, the Massachusetts telecommunications market has experienced competitive growth in all sectors, including residential and business, urban and rural. In 1995, the Department adopted a Service Quality Plan for Verizon, consisting of 12 quality measures in the categories of Installation Service, Maintenance Service, and Service Response. Verizon reports its performance on each of the measures to the Department on a monthly basis. If Verizon's performance falls below the Department's threshold, Verizon pays a penalty in the form of a refund to the ratepayers. By continuing to monitor Verizon's quality of service, the Department ensures that Verizon allocates sufficient resources for the maintenance of quality basic service to all customers, regardless of the level of competition the company faces in a particular market.

Analysis and Implementation of Major Federal Regulatory Changes

Decisions of the FCC, Congress, and state and federal courts affect the structure of the telecommunications industry and the Department's authority to regulate intrastate telecommunications services. Division staff monitor large volumes of relevant case law from other agencies and jurisdictions to keep abreast of major issues that may influence the provision of telecommunications services within Massachusetts. For example, the FCC currently is being urged to classify certain advanced services, such as broadband internet access, as telecommunications services, which may result in an expansion of the Department's jurisdiction and responsibilities. In addition, the responsibility of incumbent local exchange carriers to make portions of their networks available for purchase on a wholesale basis continues to be litigated in the courts and at the FCC; the outcome of this litigation will have an impact on the development and sustainability of local competition in Massachusetts.

Enforcement

The Telecommunications Division enforces a wide variety of laws, regulations, and policies. The Division also enforces the state law requiring local exchange carriers with more than 1,000 customers to provide adaptive equipment to disabled customers. The Department's methods for

Telecommunications Division

ensuring compliance include mass mailings notifying the industry of Department rules and regulations; issuing Notices of Probable Violation; opening investigations; and issuing Orders to cease and desist.

Development of Policies to Address New Technologies and Market Conditions

The evolution of the telecommunications industry within Massachusetts has resulted in many new telecommunications service providers and a plethora of new service offerings. Because of the volatility of the telecommunications industry, the Telecommunications Division analyzes new technologies and market developments in order to determine their impact on consumers. For example, the Division recently conducted an in-depth investigation into the customer impact resulting from telecommunications service providers declaring bankruptcy and quickly exiting the market. As a result of this investigation, the Department instituted Mass Migration rules, under which any local exchange carrier discontinuing service in the Massachusetts market must file an exit plan with the Department 90 days in advance of the discontinuation, and provide its customers with 60 days advance notice.

Education and Public Information

The Telecommunications Division devotes substantial staff time to explaining Department regulations and policies to potential and existing providers of telecommunications services. Staff also responds to consumer inquiries or refers consumers to the Consumer Division for additional assistance. From time to time, the Department requires telecommunications carriers to develop customer education materials explaining major changes in the provision of services; the Telecommunications Division reviews these materials for technical accuracy.

A single strand within a fiber optic cable can carry over 100,000 conversations.



The Electric Power Division's mission historically has been to ensure that Massachusetts electric companies provide their customers with the most reliable electric service at the lowest possible cost. Prior to the restructuring of the electric industry, this meant regulation of electric monopolies. Since the passage of the Electric Industry Restructuring Act in 1997, the Division's mission has evolved substantially. The Division's current mission is to ensure that (1) Massachusetts electric companies provide their customers with distribution and customer service in a reliable and least-cost manner, and (2) retail competitive suppliers provide generation service to customers in a manner that is consistent with the Restructuring Act and the Department's regulations.

In addition to performing the Department's general oversight of electric companies, the Electric Power Division has specific responsibilities to:

- Grant licenses to qualified entities to serve as competitive suppliers and electricity brokers;
- Review electric company solicitations for default service supply;
- Monitor and assess electric outages, and oversee corrective actions;
- Review electric companies' service quality plans;
- Monitor wholesale market prices and the availability of long-term power supplies;
- Develop Department initiatives to assist the development of a competitive generation market for small customers;
- Participate in regional and national initiatives to further implement restructuring of the wholesale electric industry;
- Review annual transition cost reconciliation filings; and
- Evaluate the cost-effectiveness of electric companies' energy efficiency programs.

Background

To better understand the Division's mission, it is helpful to think of electric service as being comprised of four components: (1) generation service, associated with the power plants that create the electricity; (2) transmission service, associated with the wires and facilities that transport the electricity at high voltages from power plants to distribution substations; (3) distribution service, associated with the wires and facilities that transport the electricity at low voltages from distribution substations to customers' facilities and homes; and (4) customer service, including the provision of billing and metering services. Historically, the Massachusetts electric companies provided all of the electric service components to their customer on a bundled, monopoly basis (*i.e.*, customers had no choice but to receive these services through their electric companies). The Department regulated the electric companies to ensure that they provided all of the service components on a reliable, least-cost basis.

In November, 1997, the Massachusetts General Court passed the Electric Industry Restructuring Act, which introduced competition into the generation component of electric service. The Restructuring Act states that "long term rate reductions can be achieved most effectively by increas-

ing competition and enabling broad customer choice in generation service, thereby allowing market forces to play the principal role in determining the suppliers of generation for all customers." Pursuant to the Restructuring Act, since March 1, 1998, customers have had the opportunity to choose entities other than their electric companies to provide the generation component of their electric service. Conversely, the other components of electric service (transmission, distribution and customer service), continue to be monopoly services that are provided by the Massachusetts electric companies and are fully regulated by the Department or, in the case of transmission, by the Federal Energy Regulatory Commission. Thus, at the present time, customers have no choice but to receive these non-generation services from their local electric distribution companies.

The Restructured Electric Industry

The Restructuring Act establishes three generation service options that are available to customers: (1) standard offer service, a "rate-protected" transition service that electric distribution companies will provide through February 2005; (2) competitive generation service, provided by competitive suppliers; and (3) default service, a "last resort"

Electric Power Division

service that also is provided by electric distribution companies. All customers receive the same level of distribution, transmission, and customer service, regardless of the option under which the customer is receiving generation service. However, the price that the customer pays for generation service is dependent on the type of service the customer is receiving.

Standard Offer Service

The Restructuring Act establishes "standard offer service" as a transition generation service, available through February 2005, which each electric company is required to provide to those customers that were receiving electric service from the company as of March 1998. Standard offer rates for each electric company are set at levels that ensure that standard offer customers receive a 15% reduction in their electric bills, adjusted for inflation, relative to a summer 1997 reference level. With limited exceptions, a customer who switches to a competitive supplier is not eligible to return to standard offer.

The statutory requirement that standard offer customers receive a 15% bill reduction has resulted in standard offer rates from distribution companies that are below the prices that competitive suppliers are able to offer (*i.e.*, the standard offer rates are below-market). Thus, the majority of customers that are eligible to receive standard offer have, to date, had little financial incentive to switch to a competing supplier. This is particularly true for residential and small business customers. Below-market standard offer rates present an impediment to the development of a robust competitive market for smaller customers, which may remain the case through February 2005.

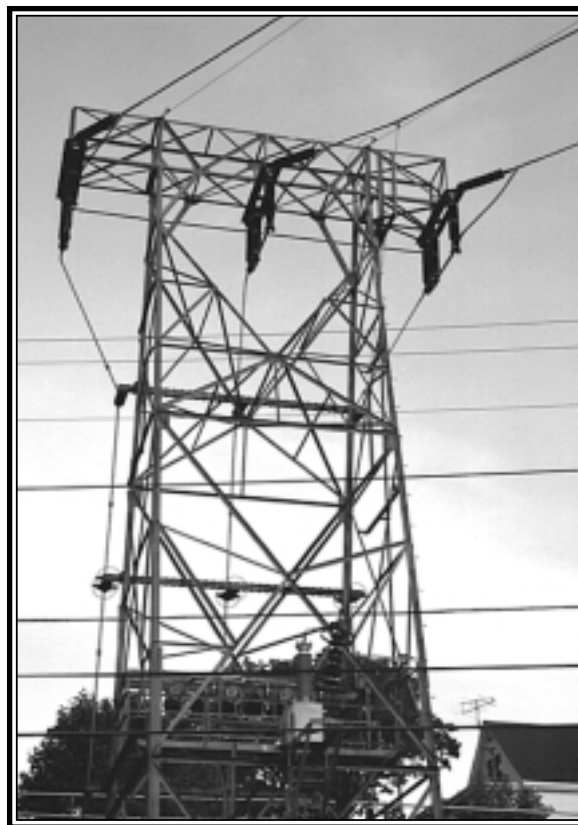
Competitive Generation Service

As stated above, the linchpin of the restructuring of the electric industry is the creation of a competitive market for generation services. Consistent with the Restructuring Act, the Department's goal is to provide electricity customers with the broadest possible choice of generation suppliers, in order to allow customers to share in the benefits of the competitive marketplace. To do so, the Department grants licenses to qualified entities to serve as competitive suppliers and electricity brokers in the restructured industry. Competitive suppliers are entities that purchase electric output from generators at the wholesale level, and sell the electricity to consumers at retail. Electricity brokers are entities that facilitate or arrange for the sale of electricity to customers, acting as "middlemen" between suppliers and customers. Staff from the Electric Power Division review license applications to determine whether the applicant has demonstrated, among other things, the financial and tech-

nical capability to provide the applicable services. As of November 2002, there were 17 licensed competitive suppliers and 18 licensed electricity brokers in Massachusetts. These suppliers and brokers focus their activities primarily on large and medium-sized business customers.

The terms and conditions by which competitive suppliers offer products and services to customers, including prices, are determined by the competitive electricity marketplace. To assist customers in comparing the products that may be offered by various suppliers, the Act requires each supplier to make available to customers information disclosure labels which describe, among others things, the environmental characteristics of the power plants from which the supplier purchases the electrical output.

The Restructuring Act establishes special provisions for a municipality that seeks to aggregate the electrical load of customers located within its municipal boundary, for the purpose of allowing those customers access to competitive supply market. The Department has approved a municipal aggregation plan for the Cape Light Compact, which includes the towns located on Cape Cod. The Compact has succeeded in moving more than 50,000 customers from default service to competitive supply.



Electric Power Division staff reviews electric companies' service quality plans.

Default Service

Default service is the "last resort" generation service that each distribution company is required to make available to those customers who are not eligible for standard offer service and are not receiving generation service from a competitive supplier. Customers who move into an electric distribution company's service territory after March 1, 1998, receive default service until they select a competitive supplier. Default service rates are market-based, as determined by competitive solicitations for default service supply that each electric distribution company undertakes. Staff from the Electric Power Division reviews each company's solicitations to ensure consistency with the Department's rules and regulations.

By its very nature as a generation service of last resort, the manner in which default service is made available to consumers could significantly affect the development of the competitive market. Because of the important role that default service role plays in the restructured industry, the Department recently opened an investigation into the manner in which distribution companies provide default service, to ensure that such provision is compatible with the development of an efficient competitive market for generation service.

Recent Department Initiatives

As stated above, a competitive generation market has not yet developed for smaller customers. To facilitate the development of such a market, the Department has taken a number of steps. The most important of these steps is the requirement that each electric distribution company make available, to licensed suppliers and brokers, customer information lists that include customer names, addresses, and historic consumption data. (Customers have the option of having their information removed from the lists.) This information should allow suppliers to market their products and services to customers more efficiently. In addition, the Department has established the manner by which suppliers and brokers may obtain mandated customer authorization over the internet.

Another of the Department's recent initiatives related to industry restructuring has been to open an investigation into "distributed generation" in Massachusetts. Distributed generation refers to generation facilities that connect directly to customers or to distribution lines, thereby alleviating the need for extensive transmission or distribution lines to deliver their power. The investigation, begun in 2002, focuses on the development of interconnection standards, the role of distributed generation in distribution company resource planning, and related rate issues.

Additional Division Responsibilities

Monitoring Distribution System Reliability

The Division continually monitors the reliability of electric distribution systems. In the summer of 2001, Massachusetts residents experienced repeated record-breaking demand for electric power. These conditions led to numerous and prolonged distribution system power outages. To reduce future outages, the Department directed electric companies to: (1) examine the underlying causes of these outages, (2) diagnose any operational or physical problems in the distribution system, and (3) establish a plan to reduce or eliminate recurrences. As a result, the companies planned numerous upgrades to their facilities. The Division has been monitoring the implementation of these upgrades.

To improve the distribution companies' reliability planning procedures, the Department also directed electric companies to provide specific information on: (1) the adequacy of employee staffing levels for operation and maintenance of the distribution system; (2) the soundness of procedures to respond to outages; (3) employee training programs for service operation and restoration efforts; and (4) a benefit/cost assessment of a program of periodic inspections and associated preventive maintenance (over a specified cycle of years) for above-ground and underground distribution systems, to be conducted by a cadre of identified managers and other personnel.

In late 2001, the Department revised its Outage Reporting Protocol ("ORP") for electric distribution companies, to use an automated, electronic system to file and update reports of outages via the internet. The ORP provides data within 30 minutes on electricity outages that affect 500 or more customers (or 500 customer-hours), or affect a critical facility (hospital, school, public transit, *etc.*). Information contained in ORP filings includes: the areas impacted by an outage; the number of customers affected; the number of circuits affected; the likely cause of the outage; any bodily injury; whether a critical facility is affected; whether the wires are overhead or underground; and contact information. The ORP helps both the Department and distribution companies monitor and assess outages so that corrective measures can be developed and implemented. When a distribution company plans an outage, it must notify the Department seven days in advance. Distribution companies submit reports analyzing all significant outages reported during the quarter.

Electric Power Division

Implementation of Service Quality Standards

The Restructuring Act directed the Department to establish service quality standards that would require Massachusetts electric companies to maintain, at a minimum, their historic levels of service quality. The Act included a provision for penalties that companies would incur if they failed to meet their historic levels of service quality. The Department established service performance measures for reliability (frequency and length of electric outages), safety, customer service and billing, customer satisfaction, and staffing levels. Pursuant to this Order, each electric company has filed an individual service quality plan. The Department has reviewed the service quality plans and the first performance reports pursuant to them. As a result, some companies have paid substantial performance penalties, approaching a maximum of 2% of revenues, as specified in the Act.

Monitoring Wholesale Electricity Markets

The electricity grid that serves customers in Massachusetts is part of an integrated New England-wide power grid, which is operated by the federally-regulated Independent System Operator, New England (ISO-NE). ISO-NE oversees the dispatch of generating plants and the operation of transmission assets in New England, in order to fulfill its primary responsibility of ensuring the minute-by-minute reliability of the regional grid. The Federal Regulatory Energy Commission (FERC) recently announced its intention to "standardize" the rules by which the various regional power grids are operated. Staff from the Electric Power Division has been actively involved in the FERC proceedings, to ensure that the interests of Massachusetts electricity customers are properly served. Electric Power Division



NSTAR's SCADA (Supervisory Control and Data Acquisition) facility allows operators to monitor and control its systems remotely.

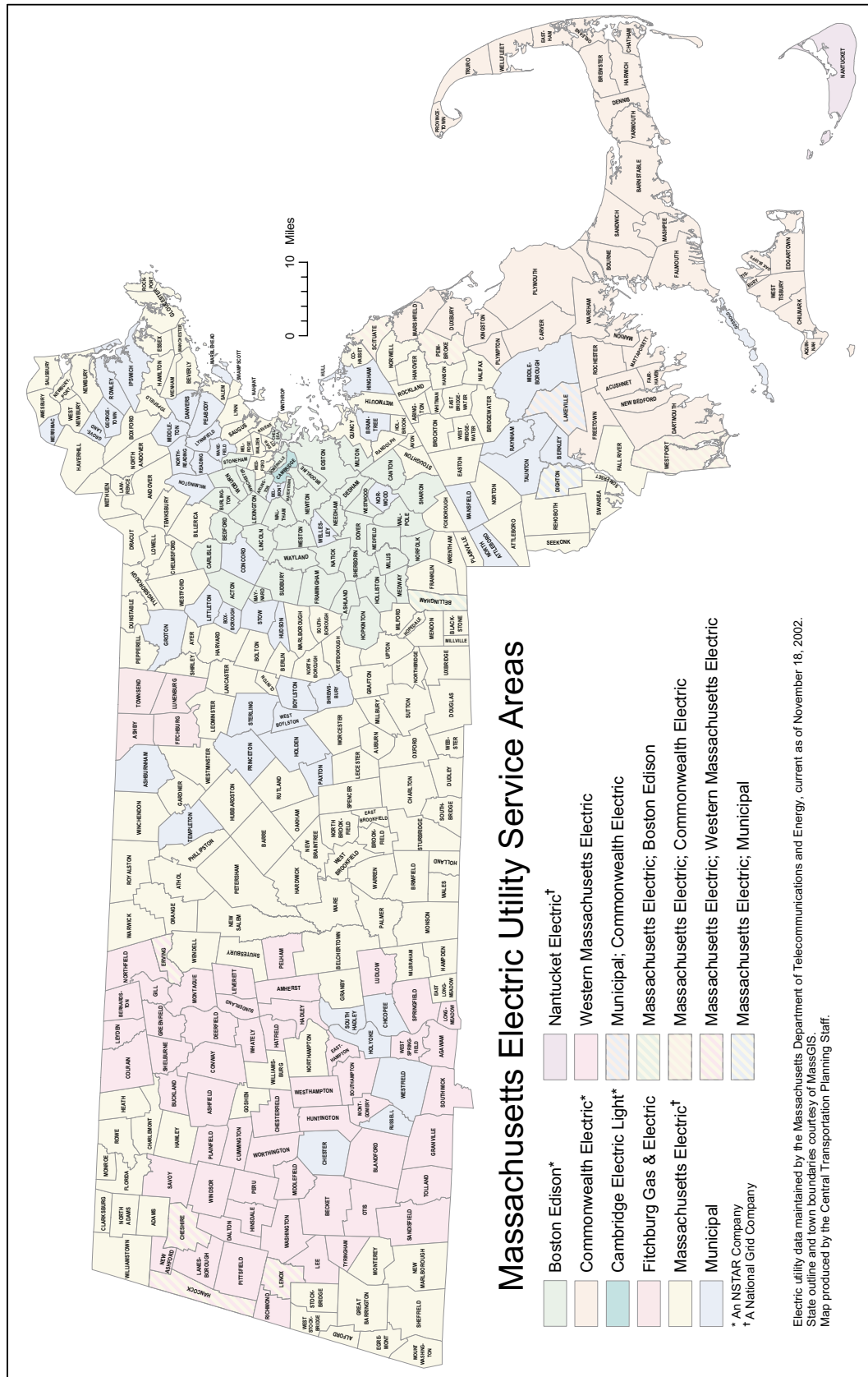
staff also monitors wholesale market prices and the availability of long-term power supply to ensure that electric service continues to be available to customers in a reliable, affordable manner. This is particularly important to customers located in a "load pocket" like the metropolitan Boston area, which typically consumes more electricity than it generates.

Review of Transition ("Stranded") Cost Reconciliation Filings

Transition costs are those generation-related costs incurred by Massachusetts electric companies prior to industry restructuring, which the companies are not able to recover from their customers because of the introduction of a competitive market for generation services. Said otherwise, transition costs represent the above-market, or uneconomic, portion of the companies' overall generation costs. The Restructuring Act allows electric companies to recover their transition costs, provided that the companies take all steps to mitigate these costs, including the divestiture of their generating units. Electric Power Division staff reviewed the divestiture filings submitted by each of the electric companies, to ensure that such divestiture fully mitigated each company's transition costs. Electric Power Division staff continue to review the annual transition cost reconciliation filings submitted by each company to ensure compliance with the Act.

Evaluation of Energy Efficiency Programs

For the past 15 years, the Department has required Massachusetts electric companies to implement energy efficiency programs. Since 1986, the companies have spent almost \$1.7 billion on energy efficiency services, achieving approximately \$3.2 billion in savings in customers' electricity costs. To fund their energy efficiency programs, the distribution companies may charge customers 0.25¢/kWh, a rate specified in the Restructuring Act that will remain in effect through 2007. Staff from the Electric Power Division work closely with the Commonwealth's Division of Energy Resources (DOER) to monitor the programs; DOER oversees the programs' designs and budgets, while the Department reviews the programs to ensure their cost-effectiveness (*i.e.*, that implementation of the programs will provide net benefits to customers).



Energy Facilities Siting Board and DTE Siting Division

The Energy Facilities Siting Board is a nine-member review board charged with ensuring "a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost." The Siting Board's primary function is to license the construction of major energy infrastructure in Massachusetts, including large power plants, electric transmission lines, natural gas pipelines and natural gas storage facilities. The Siting Board also has the authority to remove regulatory obstacles to the construction of energy infrastructure by issuing, or altering the terms of, other state and local permits.

Administratively, the Siting Board is located within the Department of Telecommunications & Energy, but is not subject to Department supervision or control. The Board is comprised of three commissioners of the Department, in addition to the Secretary of Environmental Affairs, the Director of Economic Development, the Commissioner of the Division of Energy Resources, and three public members who are appointed to three-year terms by the Governor. The Board is staffed by members of the Department's Siting Division.

Siting Division responsibilities to the Siting Board and to the Department require its staff to:

- Review petitions to construct major energy infrastructure;
- Hear requests for override of local permits, licenses, or other requirements;
- Represent the Commonwealth in proceedings before the Federal Energy Regulatory Commission;
- Enforce orders of the Siting Board;
- Hear requests for zoning exemptions; and
- Adjudicate petitions for eminent domain and survey access.

Siting Board Responsibilities

Siting Proposal Review

The Siting Board reviews petitions to construct major energy infrastructure, including power plants, electric transmission lines, natural gas pipelines and natural gas storage facilities. Siting Board review is conducted by means of a formal adjudicatory proceeding in accordance with G.L. c. 30A. Final decisions of the Siting Board are appealable directly to the Massachusetts Supreme Judicial Court.

The Siting Board's review of most types of energy infrastructure encompasses the need for the facility, alternative means of meeting that need, alternative sites, and environmental impacts and cost; however, due in part to the 1997 Electric Restructuring Act, the Board's review of power plants generally is limited to potential environmental impacts. The Siting Board's environmental review covers a broad range of issues, including noise, land use, health, and visual impacts; air quality; water resources; and the costs of mitigating environmental impacts. Siting Board decisions typically represent a balancing of local and regional environmental impacts and the benefits of the project in terms of contributing to a reliable energy supply.

Between 1996 and 2000, the Siting Board reviewed and

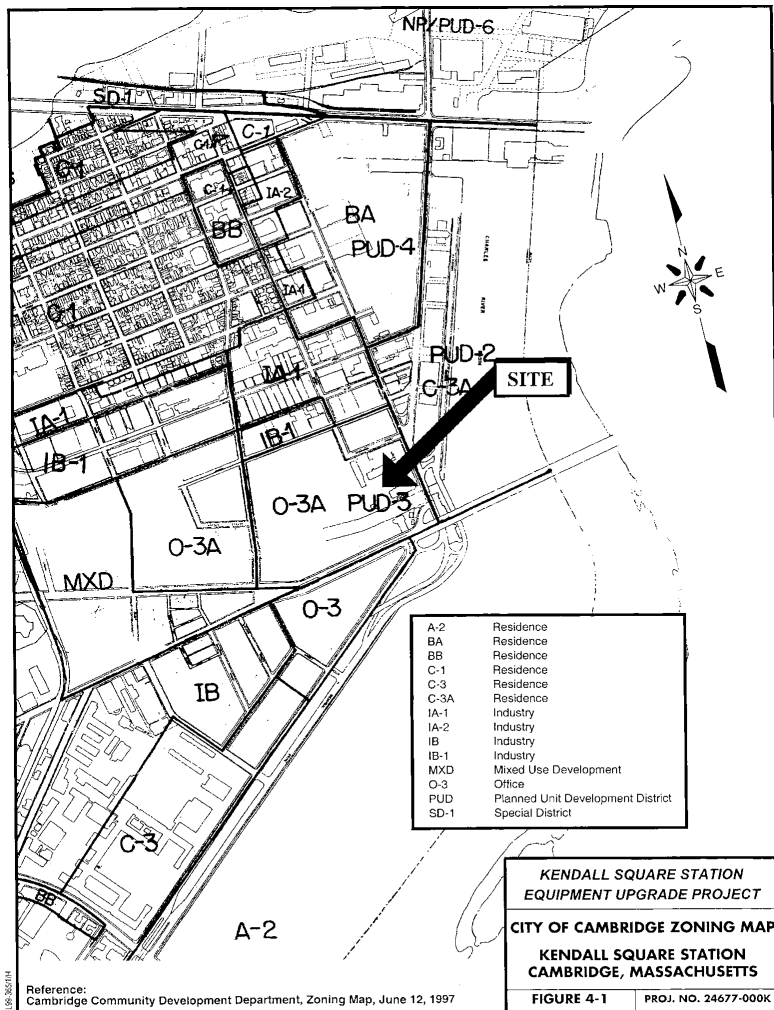
approved twelve petitions to construct new power plants in Massachusetts. Of these, four have been completed and four more are under construction. Each plant has been required to mitigate its environmental impacts, where it has been shown cost-effective to do so. Recently, the Siting Board's caseload has shifted from reviews of new power plant proposals to reviews of proposals for supporting infrastructure, such as the gas pipelines and electric transmission lines largely designed to support the new power plants and the regional transmission grid.

Override Authority

Through the granting of a Certificate of Environmental Impact and Public Interest, the Siting Board has the authority to override a local ordinance, permit requirement, licence, or other "burdensome condition or limitation" that would unduly delay or prevent construction of an energy facility approved by the Board. A facility developer can also apply for a Certificate if it believes there are inconsistencies among resource use permits issued by state or local agencies.

In 1999, the Siting Board exercised its Certificate-issuing authority for the first time. In an October 2002 decision, the Supreme Judicial Court upheld the Siting Board's action.

Energy Facilities Siting Board and DTE Siting Division



Siting Board approval of energy projects requires careful consideration of community impacts.

Federal Activities

The Siting Board represents the Commonwealth in proceedings before the Federal Energy Regulatory Commission (FERC) concerning the construction of energy facilities in Massachusetts. For example, the Siting Board typically intervenes when interstate natural gas pipeline companies petition the FERC to construct major gas pipelines in the Commonwealth. In 2001, the Siting Board participated in the federal review of the Maritimes and Northeast Phase II/ Hubline project, which would bring natural gas from eastern Canada to metropolitan Boston and the South Shore, and in FERC's review of the Tennessee Gas Dracut Expansion project.

Enforcement

The Siting Board is authorized to levy a civil penalty when an applicant has violated any order of the Board. The maximum fine is \$1000 per day per violation, with a maximum civil penalty of \$200,000 for any related series of violations.

Siting Division Responsibilities

The Siting Division, comprised of attorneys and technical analysts, performs the staff work for the Siting Board activities described above. In addition, the Siting Division handles a variety of land use cases for the Department, including petitions for zoning exemptions, for authority to exercise eminent domain, and for permission to construct certain transmission lines that do not fall under Siting Board jurisdiction.

Zoning Exemptions

State law authorizes the Department to exempt public service corporations from compliance with specific municipal zoning ordinances or by-laws if it determines that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public. The Siting Division adjudicates many of these cases for the Department. Recent zoning exemptions that have been

granted include exemptions for the construction

of a gas meter station in Danvers, for the construction of an electrical substation in Westford, and for the construction of a gas chromatograph building at a natural gas transmission facility in Agawam.

While the Department's use of its zoning exemption authority to enable the construction of energy infrastructure has been relatively non-controversial, its use of this authority for cellular communications towers has engendered some debate. The Department has held that wireless service providers, like other providers of telecommunications services, are public service corporations and have standing to seek zoning exemptions. Since 1984, the Department has issued approximately 12 zoning exemptions to wireless service providers for the construction of cell towers or the attachment of wireless antennae to existing structures. Some of these exemptions were issued with the consent of, or without opposition from, the affected municipality; in

Energy Facilities Siting Board and DTE Siting Division

other cases, the exemption has been granted over municipal opposition.

In response to concerns about the proliferation of cell towers and siting conflicts, the Massachusetts Office of Consumers Affairs and Business Regulation has convened a "Wireless Steering Committee," representing of a range of interested parties, to address cell tower siting issues.

Eminent Domain and Survey Access

On behalf of the Department, the Siting Division adjudicates petitions by electric, natural gas, and water companies for the right to exercise the power of eminent domain to meet their public service obligations. To grant eminent domain, the Department must determine that the property is necessary for the stated purpose, will serve the public convenience, and is consistent with the public interest.

The Siting Division also administers the Department's authority to grant electric, natural gas, and water companies permission to enter private lands for the purpose of making a survey preliminary to eminent domain proceedings. Recent survey rulings allowed Maritimes and Northeast to conduct preliminary surveys incident to the federal permitting of the Phase III/Hubline gas pipeline project, and granted the Tennessee Gas Company authority to conduct surveys for a gas pipeline in Agawam and West Springfield.

Precedent, Policies & Practices

Responses to 1997 Restructuring Act

The 1997 Electric Restructuring Act amended the Siting Board's review of proposed generating facilities by reducing its scope to include "only the environmental impacts of generating facilities, consistent with the commonwealth's policy of allowing market forces to determine the need for and cost of such facilities." This change explicitly eliminated from the Board's review issues it had previously considered when evaluating generating facilities: the need for the facility and alternative sites.

In addition, if developers could demonstrate that the emissions from their proposed facilities would be low enough, the Act exempted the facilities from a review of alternative (*i.e.*, less polluting) technologies.

In response to the Restructuring Act, the Siting Board developed a technology performance standard for air emissions from generating facilities, revised its standards of review for generating facilities, and conducted an inquiry concerning the Siting Board's review of generating facility viability.

CO₂ Policy

Since 1991, the Siting Board has required developers of new generating facilities to mitigate the emission of carbon dioxide (CO₂) from their plants. Currently, the Siting Board requires developers to contribute \$1.50 per ton for one percent of a plant's CO₂ emissions to cost-effective CO₂ mitigation programs to be selected through consultation between the developer and Siting Board staff. This approach is intended to promote a broad range of mitigation activities, such as landfill gas recovery or energy efficiency, in addition to tree-planting. Developers may also make their contributions to the Climate Trust, a national organization that funds projects that reduce greenhouse gas emissions. As of September 2002, the Siting Board had approved CO₂ mitigation programs with a total value exceeding \$1.5 million. It is likely to approve additional programs in the near future.



Siting of the Danvers Take Station required a zoning exemption from the Department.

Energy Facilities Siting Board and DTE Siting Division

Ongoing Regulatory Revisions

The Siting Board recently initiated a complete overhaul of its regulations to reflect the enactment of the merger legislation in 1992, the enactment of the Restructuring Act, and other changes in the energy industry since the creation of the Siting Board in the late 1970s. Consistent with the directives of Executive Order 384, the Siting Board also has sought to simplify the language of its regulations and make them more accessible to the lay reader.

During the spring and summer of 2002, the Siting Board conducted a rulemaking to revise 980 C.M.R. § 1.00, "Rules for the Conduct of Adjudicatory Proceedings" and 980 C.M.R. § 2.00, "General Information and Conduct of Board Business," and to repeal 980 C.M.R. § 3.00, "Rules for Adopting Administrative Regulations." During 2003, the Siting Board intends to promulgate new rules governing for the filing of petitions to construct power plants, electric transmission lines, natural gas pipelines, and natural gas storage facilities; the Siting Board will then repeal many of the rules pertaining to its pre-1992 responsibilities. This process should result in a consistent, clearly organized, and readable set of regulations.

The Natural Gas Division provides technical support to the Commission in the regulation of the state's ten investor-owned natural gas companies (also called "local distribution companies" or "LDCs"). In total, these companies serve approximately 1.4 million gas customers, and have combined operating revenues of approximately \$1.7 billion.

An important accomplishment of the Department over the last several years has been to introduce competition into the local gas distribution industry through the "unbundling" of rates. The Gas Division has worked closely with the Commission to bring about regulatory changes that provide gas customers opportunities to participate in a competitive gas market, while maintaining traditional consumer protections.

Pursuant to state statute, the Division has the authority and the responsibility to:

- Review local gas distribution companies' forecast-and-supply plans and long-term gas supply contracts;
- Review non-tariff contracts for the sale and transportation of natural gas;
- Review the appropriateness and accuracy of LDC filings made pursuant to the Cost of Gas Adjustment Clause and the Local Distribution Adjustment Clause;
- Review LDCs' energy efficiency plans;
- Assist the Rates Division in base rate, merger, and financing filings;
- Review LDCs' service quality filings;
- License gas suppliers and retail agents;
- Review and, where appropriate, intervene in federal regulatory proceedings and activities that affect the interests of gas consumers in the Commonwealth; and
- Assist the Consumer Division in addressing gas-related consumer issues; provide information and assistance to the public, press, industry, and government officials.

Division Responsibilities

Review of Forecast and Supply Plans

Local distribution companies must submit a five-year Forecast and Supply Plan to the Department for approval every two years. In its review of the forecast component, the Gas Division determines whether the company has accurately projected the gas requirements of the company's service area. A forecast must reflect accurate and complete historical data and employ reasonable statistical projection methods. In its review of the supply plan, the Division must determine whether the plan is adequate to meet projected demand under a reasonable range of contingencies.

Review of Long-Term Gas Supply Contracts

LDCs must submit all supply contracts with terms longer than one year to the Department for review and approval. Long-term supply contracts include both gas commodity (the physical natural gas) and capacity (the pipeline required to transport the natural gas from the production areas to the LDC's distribution system). In evaluating a gas

company's proposed contract for commodity or capacity, the Division examines whether acquisition of the resource would be consistent with the public interest. To do so, the Division determines whether the LDC has shown that the acquisition (1) would be consistent with the company's portfolio objectives, and (2) would compare favorably to the range of options reasonably available to the company and its customers.

Review of Non-Tariff Contracts

Large commercial and industrial gas customers who are capable of burning alternative fuels, such as oil or coal, sometimes find that their gas companies' Department-approved tariffs are not competitive with their alternative fuel options. To retain these customers and assure a continued stream of revenue, LDCs may offer them non-tariff contracts, subject to Department approval. The Division receives approximately 50 such contracts for review each year. In its review, Division staff ensure that (1) the customer is capable of burning an alternative fuel; (2) the price charged under the contract exceeds the marginal cost of providing service; and (3) the company's existing ratepayers are not responsible for any of the costs associated with providing the specified service.

Natural Gas Division

Review of Requests for Cost Adjustments

Department regulations allow gas companies to recover costs for several gas supply factors. For example, gas commodity, storage, and transportation costs typically fluctuate seasonally. Through semi-annual cost-of-gas adjustment filings, LDCs request billing changes that enable them to reconcile these fluctuations. The Gas Division reviews these filings to ensure accounting accuracy and prudent company practices, and approves adjustments to billings via the Cost of Gas Adjustment Factor. In 2001, the Department amended its regulations to allow gas companies to make interim filings for recovery of gas costs, when projected under- or over-collections exceed five percent. The Division encourages gas companies to request these adjustments, to dampen the impact on customers' bills when there are significant changes in gas costs.

Similarly, Department regulations allow a gas company to recover, or credit on a reconciling basis, a variety of costs that have been determined to be distribution-related but were not included in base rates. The charge used to recover all of these costs is referred to as the Local Distribution Adjustment Factor (LDAF). Examples of recoverable expenses include the costs of energy efficiency programs and costs related to the federal restructuring of the gas industry. LDCs can also recover costs associated with their federal- and state-mandated cleanup of past contamination at sites polluted by wastes from gas manufacturing plants. Although most gas manufacturing plants in Massachusetts ceased operations by the early 1950s, their wastes continue to present environmental hazards. The Division reviews all company requests for adjustments via the LDAF to ensure accounting accuracy and prudent company practices.

Review of Energy Efficiency Plans

Since 1992, the Department has required gas distribution companies to develop energy efficiency plans that bring cost savings to consumers and reduce the overall need for gas. The companies' plans typically include weatherization service programs (offering energy audits, attic insulation, wall insulation, air sealing, and heating system repairs) and rebates for the installation of clock thermostats or for the replacement of boilers, furnaces, and water heaters with high-efficiency units. The gas companies must submit their energy efficiency plans to the Division, which reviews the proposed programs to ensure cost effectiveness. The companies can then recover energy efficiency-related costs via the LDAF. In February 2000, the Department established new methods and procedures for evaluating energy efficiency programs, to more accurately assess their costs and benefits.

Cooperation with the Rates Division

The Gas Division works closely with the Rates and Revenue Requirements Division to review various rate case filings and merger-and-acquisition petitions. In traditional rate cases, Gas Division staff are responsible for reviewing the terms and conditions of distribution service, the allocation of local production and storage costs, weather normalization, gas-related cash working capital, marginal costs, and the treatment of revenues from off-tariff contracts. As the gas industry makes the transition to a competitive supply environment (see below), the Department will continue to require gas companies to provide least-cost distribution service, but this requirement will be implemented through performance-based regulation (PBR). PBR refers to the use of incentives and price caps as a means of setting utility rates – in contrast to traditional rate-of-return rate making, which is based on a company's cost of service. An important feature of PBR is a service quality program (see below), which ensures that companies will not compromise service through insufficient expenditures on customer service activities. Thus far, the Department has approved PBR plans proposed by Boston Gas Company and by Berkshire Gas Company. The Division expects that the other gas companies in the state will be filing PBR plans in the coming years.

Gas Division staff also supports the Rates Division in reviewing merger-and-acquisition petitions involving the consolidation of gas supply portfolios. The Department has seen six such cases in the last three years. The resulting transactions ultimately led to significant savings for Massachusetts gas customers. However, the number of gas companies in the state remains large relative to the size of the market they serve, suggesting that economies of scale could produce further efficiencies. The Division therefore anticipates that companies will bring additional merger-and-acquisition proposals before the Department.

Review of Service Quality Filings

In June 2001, the Department issued an order finalizing service quality (SQ) standards for all gas and electric distribution companies. The order established performance measures for customer service, billing, customer satisfaction, staffing levels, safety, and reliability. Pursuant to this order, the LDCs filed company-specific service quality plans for Department review, which the Department approved in the spring of 2002. Each gas company must file a SQ report in March 2003, and annually thereafter, comparing its actual performance against the SQ standards established by the Department. The Gas Division is responsible for the review of all gas SQ plans to ensure that the companies maintain a minimum quality of service.

Licensing of Gas Suppliers and Retail Agents

Gas suppliers and retail agents who wish to sell natural gas to Massachusetts retail customers must be certified by the Department. The Gas Division reviews the applications for these licences and conducts interviews with the applicants. Staff determines whether the applicants have the technical ability to procure and deliver natural gas, and whether they are familiar with the Department's rules and the gas industry in general. The Division also evaluates documentation of the applicants' financial capability, such as the level of capitalization or corporate backing, to provide the proposed services.

Consumer Education

Gas Division staff assists the Consumer Division in addressing gas-related consumer issues. In addition, staff provides information and assistance on a daily basis to consumers, marketers, regulated companies, consultants, financial analysts, and government officials. Inquiries range from consumer questions about new rates, to supplier license requirements, as well as requests for industry data by government agencies or industry analysts.

Participation in Federal Policy-Making

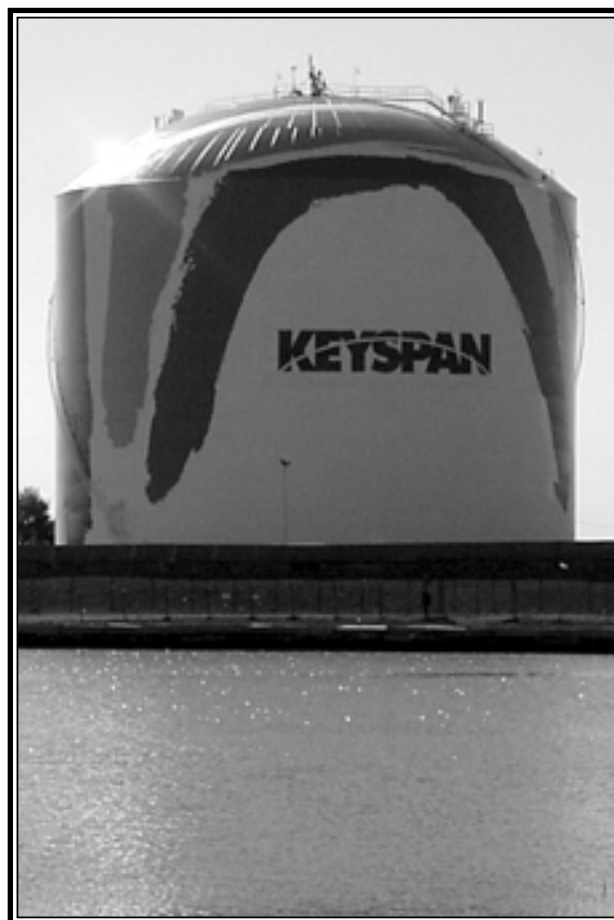
Over the past decade, actions taken by the Federal Energy Regulatory Commission, the federal Department of Energy, and Congress have dramatically changed federal regulation of the natural gas industry. These changes directly affect the interests of Massachusetts customers who are served by federally regulated pipelines and liquefied natural gas import terminals. Division staff works with other state agencies and regional organizations to support the Department's efforts to stay informed regarding current federal statutory and regulatory proposals, and to develop public positions on issues that may affect Commonwealth interests.

Competitive Gas Supply and Unbundling Initiatives

In the mid-1980s, FERC began to introduce more competition into the wholesale gas industry by allowing the customers of interstate gas pipelines, primarily LDCs and some large industrial consumers, to procure their gas supplies separately from the pipeline services that transport the gas. Previously, the pipeline companies "bundled" the price of the gas commodity and the transportation services together into one rate. To enable gas customers to now buy

their gas from competing suppliers, FERC required many interstate pipelines to "unbundle" gas transportation from gas sales, and to offer the transportation component under a separate rate.

In Massachusetts, the Department determined that if the benefits of FERC's actions were to fully accrue to Massachusetts gas consumers, these consumers must similarly have the opportunity to purchase gas from sources other than an LDC. As a first step, the Department directed all Massachusetts LDCs to file gas transportation rates for their large customers; beginning in 1988, large gas customers in the Commonwealth began to purchase gas from suppliers other than LDCs. Since the early 1990s, the Department has been active in implementing new policies so that the benefits of the competition created by FERC could reach additional LDC customers. As a result, all LDCs in Massachusetts offered unbundled rates, allowing most of their commercial and industrial customers to choose their own gas supplier at competitive commodity rates.



The Department reviews all gas company supply plans, which may include supplemental use of LNG.

Natural Gas Division

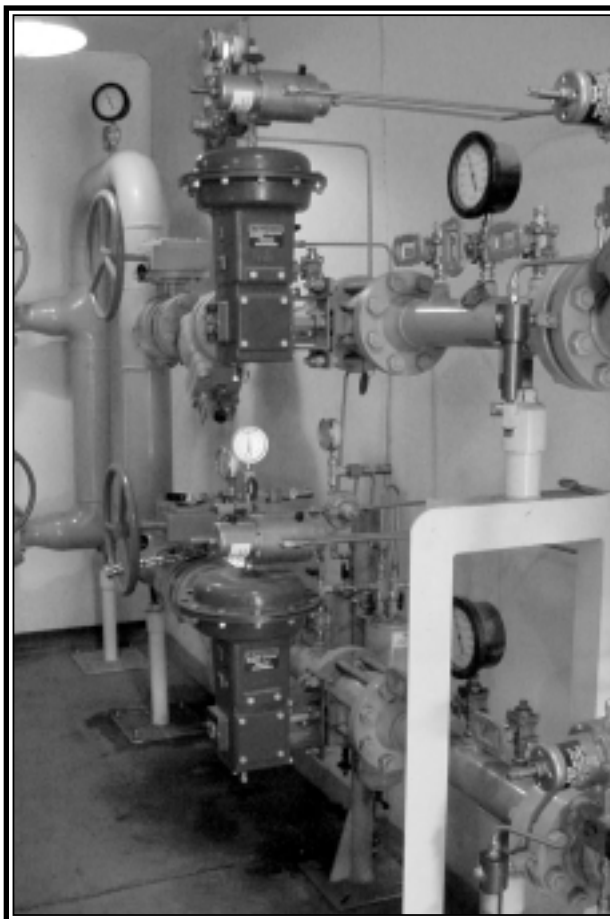
The Department has been continuing efforts to improve the environment for competitive gas procurement and to extend the benefits of competition to all customers, including residential customers. The Department's ultimate objective throughout its unbundling efforts has been to provide the opportunity for residential and smaller commercial and industrial users of natural gas to benefit from the prospective benefits of lower commodity prices while maintaining the traditional consumer protections that have been the hallmark of Department regulation.

On July 18, 1997, the Department directed the ten investor-owned LDCs in Massachusetts to commence a collaborative discussion to develop common principles and appropriate regulations to unbundle the services of all jurisdictional LDCs. Participants in the "Gas Unbundling Collaborative" also included the Attorney General, the Division of Energy Resources, Associated Industries of Massachusetts, The Energy Consortium, marketers of natural gas and services, interstate pipeline companies, low-income advocates, and utility employees. The Department indicated that, at a minimum, the participants should address the following issues: (1) services that can be offered on a competitive basis; (2) terms and conditions of service; (3) consumer protections and social programs; (4) mitigation of gas-related and non-gas related transition costs; (5) third party supplier qualifications; and (6) curtailment principles to govern the use of natural gas under emergency conditions when supply is disrupted.

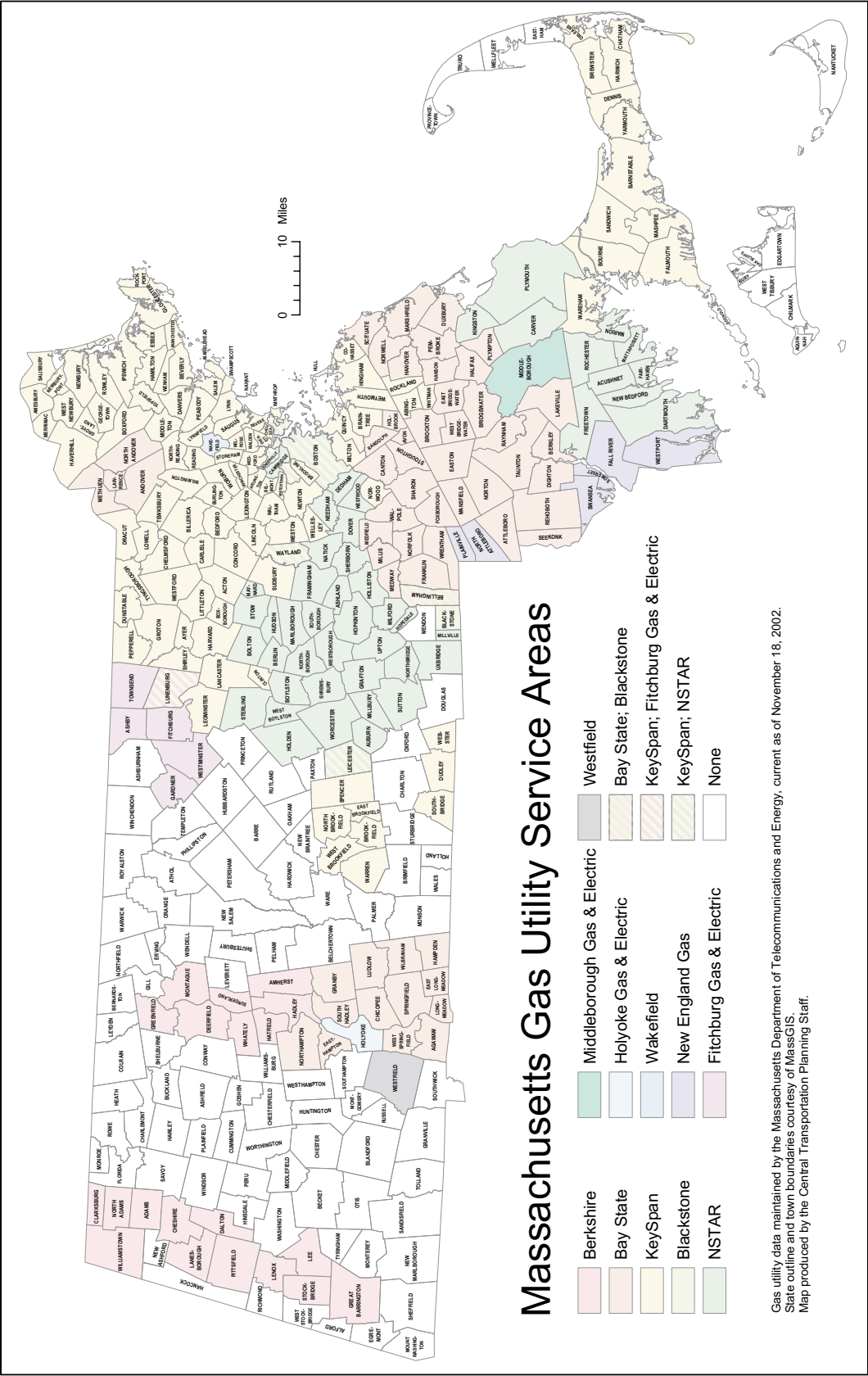
After several months of discussion and negotiation, the Gas Unbundling Collaborative reached agreement in some key areas, but was unable to achieve consensus in others. In April 1998, the Department issued a Notice of Inquiry regarding a wide range of issues associated with the restructuring of the natural gas industry, but focusing on the ones that proved most contentious for the Collaborative. Following comments and public hearings, the Department issued an order in February 1999 that settled many of the outstanding issues, and established a five-year period during which much of the transition to a competitive market would take place. Together with additional Department approvals and the promulgation of new regulations during 1999 and 2000, this order laid out the framework for a competitive retail gas market in the Commonwealth.

Now, for the first time, Massachusetts residential customers are able to choose their own gas suppliers. This change allows customers to comparison shop and negotiate for the best value in gas commodity from competitive suppliers. However, the price charged by these competitive suppliers for natural gas is not regulated. Instead, competitive gas suppliers set their own prices, just like the sellers of most goods and services in the marketplace. While the number of competitive gas suppliers is currently small,

more suppliers may enter the marketplace over time. The local distribution company is still regulated by the Department and continues to deliver the gas to customers' homes or businesses (at a Department-approved distribution rate), to read the meter, maintain the pipes in the ground, and respond to emergencies.



The Department approves all long-term gas contracts.



Pipeline Engineering and Safety Division

The Pipeline Engineering and Safety Division is responsible for technical and safety oversight of ten natural gas companies and four municipal gas departments in Massachusetts. As a certified agent of the U.S. Department of Transportation (US DOT), the Division enforces federal regulations pertaining to natural gas distribution pipelines within the Commonwealth, as well as the Department's own comprehensive gas safety regulations. The Division also enforces the state's "Dig Safe" law.

The Division's authority over technical and safety issues requires it to:

- Inspect gas facilities for compliance with federal and state design, construction, operating, maintenance, emergency and plant security regulations; and enforce such regulations;
- Investigate and determine the cause of gas-related accidents and make recommendations to minimize recurrences;
- Develop regulations applicable to the gas industry to enhance public safety;
- Enforce the Dig Safe Law by investigating alleged violations and assessing fines;
- Inspect and test gas meters for accuracy and safety before the meters are installed at consumers' premises;
- Resolve consumer complaints regarding the accuracy of gas and electric meters by field tests; and
- Ensure that utility operators restore the streets and roads after excavating in the public way.

Division Responsibilities

Natural gas and propane are considered hazardous fuels by both the state and the federal government. Massachusetts has 19,000 miles of gas main, 20 liquefied natural gas (LNG) plants, and 24 propane plants. These facilities are operated by ten natural gas companies and four municipal gas departments, serving over 1.4 million customers.

To protect consumers and the general public from the potential hazards involved in the transmission, distribution, production, storage and use of natural gas and propane, both the US DOT and the Department regulate these facilities. In addition to enforcing the DTE's regulations, the Pipeline Safety Division acts as an agent for the US DOT in the enforcement of federal regulations. The Division inspects natural gas distribution pipeline facilities within the Commonwealth, investigates incidents, and imposes remedial actions (including civil penalties) when an operator is found to be negligent.

Gas Facility Inspections

The Pipeline Safety Division's engineers inspect gas facilities for compliance with federal and state safety regulations. If an apparent violation exists, a Notice of Probable Violation or Warning Letter is issued to the alleged violator. The alleged violator usually responds at an informal review conference with Division staff. If a violation is confirmed, an informal review decision and fine, along with an offer to enter into a Consent Order, will issue. State statute

permits a fine of up to \$1,000 per violation for each day the violation persists, up to a maximum of \$200,000 for any related series of violations. The company found to be in violation may request an adjudicatory hearing before the Commission if it disputes the informal review decision.

Intrastate Transmission Pipelines

The increased use of natural gas to generate electricity has resulted in the construction of new intrastate pipelines to connect power plants directly to interstate gas transmission lines. Some of these new lines are owned and operated by the power plant operator instead of the traditional gas distribution companies. Such pipelines typically operate at pressures significantly higher than local gas distribution pressures. As intrastate facilities, these pipelines fall under the aegis of the Pipeline Safety Division, whose engineers inspect their design, construction, operation, and maintenance.

Investigation of Natural Gas Incidents

When a gas-related incident occurs, it is the Pipeline Safety Division's engineers who investigate the incident to determine its cause, determine whether the pipeline operator was in violation of any safety regulations, and make recommendations to the Commission for preventing or minimizing a recurrence of such incidents in the future. Incident investigations may result in the promulgation of new safety regulations.

Pipeline Engineering and Safety Division

Security

Security of pipeline facilities has become a major issue since the September 11th terrorist attacks. Natural gas pipelines and their associated facilities are vital to the Massachusetts economy. The Division has inspected high profile facilities such as LNG and liquid petroleum gas plants, gate stations, and computer control systems, and has worked with gas companies and government officials to ensure that extra security precautions have been taken to protect gas pipeline facilities and the public.

Dig Safe Law Enforcement

Massachusetts' Dig Safe law requires any person who proposes to excavate in public or private land to pre-mark the excavation site and to notify the Dig Safe Center of his intent to excavate. The Dig Safe Center then contacts all operators of underground gas pipelines and electric, telecommunication and television cables in the excavation locale. These operators, in turn, must mark the locations of their facilities in advance of the excavation to minimize the risk of potential damage by the excavator. Lastly, the excavator must take adequate precautions to prevent damage to the facilities while digging.

Any person aware of possible violations of Dig Safe procedures may report them to the Pipeline Safety Division; utility operators are mandated by regulation to report possible Dig Safe violations. A compliance officer investigates the reports, issues Notices of Probable Violation, conducts informal review conferences with the respondents and operators of the facilities, and performs field inspections, as necessary. The Division then issues findings and may assess a civil penalty. If the Division's decision is disputed, a Legal Division hearing officer will conduct a formal adjudicatory hearing.

Gas Meter Testing

State law requires that each gas meter be tested by one of the Division's compliance officers for volumetric accuracy and for leakage once every seven years, or when the meter is removed from service. Gas companies or municipal gas departments typically remove meters to be tested and replace them with previously approved meters. Operators then deliver meters to a centralized location where a compliance officer tests them to ensure that they are not leaking and that the consumer is paying for the correct amount of gas.

Consumer Complaints

The Pipeline Safety Division assists the Department's Consumer Division in addressing complaints by customers pertaining to both gas and electric metering. In the case of an electric meter, a Division compliance officer witnesses a test of the "complaint" meter in the field to determine its accuracy. For gas meters, the suspect meter is removed and tested at the operator's premises by a Division compliance officer.

Preservation of the Public Way

In 1998, the Division responded to complaints from municipalities and industry about repairs made to public roads after utility work was completed. The Division chaired an ad hoc committee of municipal and public utility officials, which drafted a set of standards for soil compaction, paving and other activities affecting road condition. The Department adopted the standards, which apply to electric, telephone, cable TV, water, and sewer as well as gas utility construction.

Partnership with Industry

US DOT regulations require that gas utility operating personnel be qualified by training and experience. These qualifications must be demonstrated by testing and work histo-



Gas meters that have passed inspection await installation.

Pipeline Engineering and Safety Division

ry. The Division recently worked with the New England Gas Association (NEGA) and industry to develop a model operator qualification (OQ) program, which was instituted in 2001. The Division's engineers served on committees that developed training outlines, schedules, and written tests. Most of the natural gas operators in Massachusetts and the rest of New England now use this program to comply with OQ rules. The Gas Technology Institute is developing a national program based on the NEGA's training program.

In other areas of cooperation, the Pipeline Safety Division has worked with the regulators in the other five New England states and NEGA to develop qualification procedures for welders of steel pipelines and fusers of plastic pipeline. This effort resulted in a uniformity of qualification throughout New England which allows operators to employ welders and fusers qualified by any of the five states without expending resources for requalifying these

employees and contractors. At the same time, pipeline safety regulators are assured that the personnel are qualified in these essential pipeline construction functions.

Precedent, Policies and Practice

The Department is a national leader in gas pipeline safety. The Pipeline Engineering and Safety Division's actions in response to violations of gas-related safety regulations have gained the recognition of US DOT and agencies in other states. With more LNG plants than any other state in the country, the Commonwealth's LNG safety regulations are the most stringent in the country.

Massachusetts is one of only a few states that has addressed the important issue of replacement or abandonment of aged cast-iron pipe. DTE's regulations require pipeline operators to prioritize and replace segments of old cast-iron pipe in accordance with Department-developed criteria. In addition, companies must replace or abandon such pipes, subject to specific criteria, when third-party excavation occurs nearby.

The Department has taken measures to address the potential safety hazards posed by unused service lines. In 1995, the Department updated existing regulations requiring the abandonment of unused lines. The regulations also specify more stringent gas leakage survey methods for operating lines.

Pending Legislative Issues

In consultation with the Legal Division and the Commission, the Pipeline Safety Division has been active in preparing and supporting state legislative initiatives. One that is currently pending is House Bill No. 58—AN ACT RELATIVE TO STATE COMPLIANCE WITH FEDERAL CHANGES IN THE NATURAL GAS PIPELINE SAFETY ACT. This Bill proposes to amend G.L. c. 164 § 105A to match state civil penalties to existing federal penalties for violations of gas safety regulations. The existing law permits a penalty not to exceed \$1,000 for each violation for each day that the violation continues, provided that the maximum penalty shall not exceed \$200,000 for any related series of violations. The proposed legislation would raise these limits to \$10,000 and \$500,000, respectively.



Pipeline Safety staff enforces Massachusetts' "Dig Safe" law.

The Transportation Division has regulatory oversight of motor vehicle and railway common carriers that transport property and passengers for hire. The Division regulates approximately 2,500 intrastate and 1,500 interstate carriers authorized to conduct business in the Commonwealth. These carriers include residential household goods movers, hazardous waste haulers, and tow companies that perform involuntary motor vehicle towing. For the purposes of safety of equipment and operations, the Division regulates the State's fifteen Regional Transit Authorities, and the MBTA's bus, trolley car and subway system. The Transportation Division also regulates over 300 motor bus companies that provide regular-route, charter and sightseeing service.

The trucking, railroad, and bus company business in Massachusetts is a multi-billion dollar industry. The Division's decisions on tariffs, entry standards, and other regulations have a significant impact on commuters, consumers, and public safety and security.

Regulation of the transportation industry requires the Transportation Division to:

- Oversee safety and security of the Massachusetts Bay Transit Authority's subway system;
- Inspect buses and railroad grade crossing signals to ensure public safety;
- Investigate railroad and bus accidents;
- Issue permits, including Motor Bus/School Bus driver certificates;
- Conduct hearings on applications for new or amended operating authority, and petitions for exemptions from certain regulations;
- Investigate consumer and industry complaints;
- Review and process tariff filings for moving companies and bus companies; and
- Establish maximum rates for passenger car involuntary tows.

Division Responsibilities

Oversight of the Massachusetts Bay Transportation Authority Subway System

The Federal Transit Administration (FTA) designates state agencies to administer federal safety regulations for "rail fixed guideway systems," under rules known as the Part 659 State Safety Oversight Program. The purpose of the program is to improve rail transit safety and security. In Massachusetts, the only rail fixed guideway system is the light and heavy rail subway system operated by the Massachusetts Bay Transportation Authority (MBTA). In 1998, DTE promulgated state rules and regulations to implement the federal program, and delegated day-to-day administration of the program to the Transportation Division.

In accordance with the federal and state regulations, the MBTA is required to develop a System Safety Program Plan and a System Security Plan. The Transportation Division conducts on-site inspections of the MBTA's facilities and equipment, and reviews the MBTA's annual internal safety audits. Every three years, the Division reviews the MBTA's implementation of its system safety and security plans and determines whether the plans need to be updated. The audit process provides an opportunity for the Transportation Division to play a proactive role in ensuring that the MBTA monitors its safety and security programs in a systematic and ongoing manner.



The DTE administers federal and state safety regulations governing the MBTA's subways.

Transportation Division

In 2002, the Department, through the Transportation Division, conducted its second triennial audit of the MBTA's System Safety and Security Plan. This was the first comprehensive analysis of the MBTA's Security Plan under the 1998 regulations. The Division made numerous safety and security recommendations, nearly all of which were accepted by the MBTA. One of the recommendations, revision of the MBTA's System Security Plan, will result in the reorganization of the MBTA Police Department. The MBTA committed to implementing the DTE's recommendations within the following several months and the Transportation Division staff will monitor the progress of this implementation.



The DTE licenses and certifies school bus drivers.

Bus and Railroad Grade-Crossing Inspections

Transportation Division staff inspect all motor buses regulated by DTE to determine compliance with state and federal safety regulations. If they find no safety defects, the appropriate permit is placed on the vehicle. Violators of the safety regulations are subject to the suspension or revocation of their DTE-issued operating authority. The Division inspects each of the approximately 5,000 buses in the state about once per year. This includes safety inspections of the buses operated by the MBTA and the state's 15 regional transit authorities.

The updating of bus safety rules is an on-going process. In light of technological innovations and the increased safety and security concerns since the events of September 11, 2001, the Department initiated a round of comprehensive regulatory revisions in the fall of 2001. The Department amended its rules to prohibit the covering of bus windows with advertising wrap that blocks views into bus interiors. Additional revisions are forthcoming.

The DTE also has regulatory authority over the 2,500 railroad grade crossings in the state. Transportation Division staff routinely inspect warning devices such as flashing lights, gates and pedestrian bells to determine proper operations. To modify or create new highway/railroad grade crossings, railroad owners must obtain DTE approval. Division staff conduct on-site inspections of track and highway configurations and evaluate traffic counts and other site-specific factors at the crossings in question before granting approval. The Division also approves installation of the appropriate equipment and electrical or electronic circuitry on any new or modified at grade rail-

road crossings. Railroad owners can appeal Division decisions to the DTE Commission.

Accident Investigation

Motor bus carriers and railroad companies are required to report all accidents resulting in loss of life, serious personal injury or considerable property damage. Last year, the Division investigated more than 239 accidents and ordered corrective remedies where appropriate.

Adjudicatory Hearings

The Transportation Division conducts adjudicatory hearings on several matters. For example, applicants for common carrier authority are required to demonstrate at a public hearing that they are fit, willing and able to operate in Massachusetts, and that there are present or future needs for their services. Both trucking and bus companies must submit financial statements in support of their claim of responsibility. New bus companies are required to submit evidence that they will adhere to state and federal safety rules and regulations before operating authority is granted. Bus companies must also provide, when required, municipal street licenses for the proposed routes. During the hearings, testimony is provided by the applicant and may also be received from shippers, local officials and other carriers in support of, or in opposition to, the new or amended authority. In 2001, the Transportation Division conducted more than 240 hearings regarding applications for common carrier authority.

The Division also holds fitness hearings in response to allegations of improper operations following complaints and/or staff investigations. The Division may impose appro-

appropriate remedies, including refunds of overages, suspensions or revocation of operating authority.

In addition, the Division holds hearings on petitions requesting exemptions from certain regulations. For example, municipalities may petition the DTE to order railroads to cease whistle-blowing at railroad crossings, as otherwise required by railroad operating rules. This issue has been raised more frequently as the MBTA has expanded commuter rail service into suburban communities. In adjudicating these cases, the Division gathers information that helps it to consider both the public safety and the public nuisance issues relating to whistle-blowing. Final authority in these cases rests with the DTE Commission.

Investigation of Complaints

A variety of transportation-related complaints can be filed with the DTE. Consumers, shippers, commuters, and competing carriers bring allegations of overcharges, safety violations, quality of service problems and improper operation. In 2001, the Transportation Division investigated more than 128 such complaints. The DTE is required by statute to investigate all complaints, and the Division's policy is to bring closure to a complaint within seven to ten business days.

Permitting

To operate in Massachusetts, intrastate commercial motor vehicles must purchase and display DTE identification decals, and interstate vehicles must register with DTE. In 2001, the Transportation Division processed more than 5,500 applications for vehicle identification devices. Motor bus carriers are required to renew their permits annually; the Division processed more than 5,000 new and renewals in 2001. In addition, both commercial motor vehicle and motor bus companies must maintain various insurance requirements and submit evidence of such coverage to the DTE each year.

Bus Driver Licensing and Certification

Under a Memorandum of Understanding with the Registry of Motor Vehicles, the Transportation Division conducts road tests for new bus drivers according to the Commercial Driver's License (CDL) program. In addition to a CDL, all school bus drivers in the Commonwealth must have valid School Bus Driver Certificates. School bus drivers must submit to both a criminal-history record check and a Registry of Motor Vehicle driving history check, and pro-



Transportation Division staff conducts safety inspections of over 2,500 railroad grade crossings.

Transportation Division

vide proof of training and a physician's examination to DTE. DTE School Bus Driver Certificates are valid for one year and must be renewed annually. In 2001, the Division processed more than 2,300 new applications for school bus driver licenses and renewed over 20,000 licenses. Each year the Division conducts several hearings to suspend or revoke operators' School Bus Driver Certificates. In reaching a decision in these hearings the Division utilizes the standard of review established in G.L. c. 90 § 8A.

Review Tariffs

Certain truck and bus companies must submit tariffs which detail the charges for each of the transportation services offered. The Transportation Division reviews tariff filings and either grants the requested tariffs or suspends them for investigation. Some services, such as sightseeing buses, face considerable competition; the Division typically approves tariffs for such services with minimal review.

State statute requires the Department to establish the maximum rates and charges for involuntary tows. With the cooperation of the Rates and Revenue Division, the Transportation Division conducts extensive cost-of-service analyses in involuntary tow rate cases. Following a formal adjudicatory process, the Division issues an order approving a tariff.

In 1971, the Legislature established the Massachusetts Community Antenna Television Commission "to authorize ... the installation of community antenna television systems in cities and towns of the commonwealth and to provide for the regulation thereof by such cities and towns and the commonwealth ..." In the thirty years since the Legislature issued this grant of authority, what began as a service designed mainly to deliver broadcast signals to rural and mountainous areas has become an \$800 million industry in Massachusetts. While some households still rely on antenna reception, cable is now the most popular choice, and its principal alternative is satellite television. In recent years, cable operators have altered service structures to compete more successfully not only with satellite providers, but with new technologies and new entrants to the marketplace. To this end, cable operators have begun a move toward offering bundled services, such as cable television, telephone, and cable modems. In recognition of the convergence of industries, the Legislature merged the Massachusetts Community Antenna Television Commission into the Department as the Cable Television Division (Cable Division) in 1997.

Cable television continues to be regulated on the local, state, and federal level. Under its enabling legislation, G.L. c. 166A, and implementing regulations at 207 C.M.R. § 1.00 *et seq*, the Cable Division:

- Oversees cable television franchising, franchise renewal, and the transfer of cable franchises in the Commonwealth;
- Establishes basic service tier programming and equipment rates for communities in Massachusetts that have requested rate regulation; and
- Enforces consumer protection standards.

The Cable Division currently oversees 10 cable television operators serving 1.9 million cable subscribers in 309 of the Commonwealth's 351 cities and towns. While the Cable Division does not regulate cable modems, broadband telecommunications has become an important part of the cable industry and, as such, broadband has raised new issues for cable regulators, such as whether it is appropriate to calculate franchise fees on cable modem fees and the appropriate ways to manage combined billings.

Division Responsibilities

Oversight of Municipal Cable Franchising

In Massachusetts, local municipalities act as the issuing authorities and negotiate and grant cable licenses, while the Cable Division retains ultimate authority in licensing matters. The Cable Division conducts an extensive educational program for communities involved in the licensing process, regarding applicable substantive and procedural requirements at the local, state, and federal levels. When licensing disputes arise at the local level, the Cable Division serves as the appellate body.

The Cable Division is presently adjudicating appeals from the decisions of several municipalities to deny approval of license transfers in connection with a proposed merger of two cable operators. The merger would result in the largest cable operator in the country, with over 22 million subscribers, 1.5 million of whom are Massachusetts consumers.

Rate Regulation

In October 1992, Congress passed the Cable Television Consumer Protection and Competition Act of 1992 which provided for the regulation of cable television rates. Pursuant to this Act and G.L. c. 166A, the Cable Division regulates subscribers' rates for basic service tier programming, installation, and equipment in those Massachusetts communities which (1) have requested rate regulation and (2) do not have effective competition from a second cable operator, as determined by the Federal Communications Commission. The Cable Division reviews the proposed rates to determine whether such rates are just and reasonable and in compliance with applicable federal law.

In 2001, the Cable Division reviewed basic service tier programming, installation, and equipment rates for the majority of Massachusetts communities. The Cable Division issued six rate orders, affecting the rates in 217 municipalities and resulting in refunds to more than 1.5 million subscribers. As cable operators consolidate operations and establish uniform channel lineups for all franchises, the Cable Division anticipates that operators will move to more

Cable Television Division

uniform pricing of services. Thus, system transfers implemented in 2001 and continuing into 2002 will likely cause an influx of rate restructuring proposals.

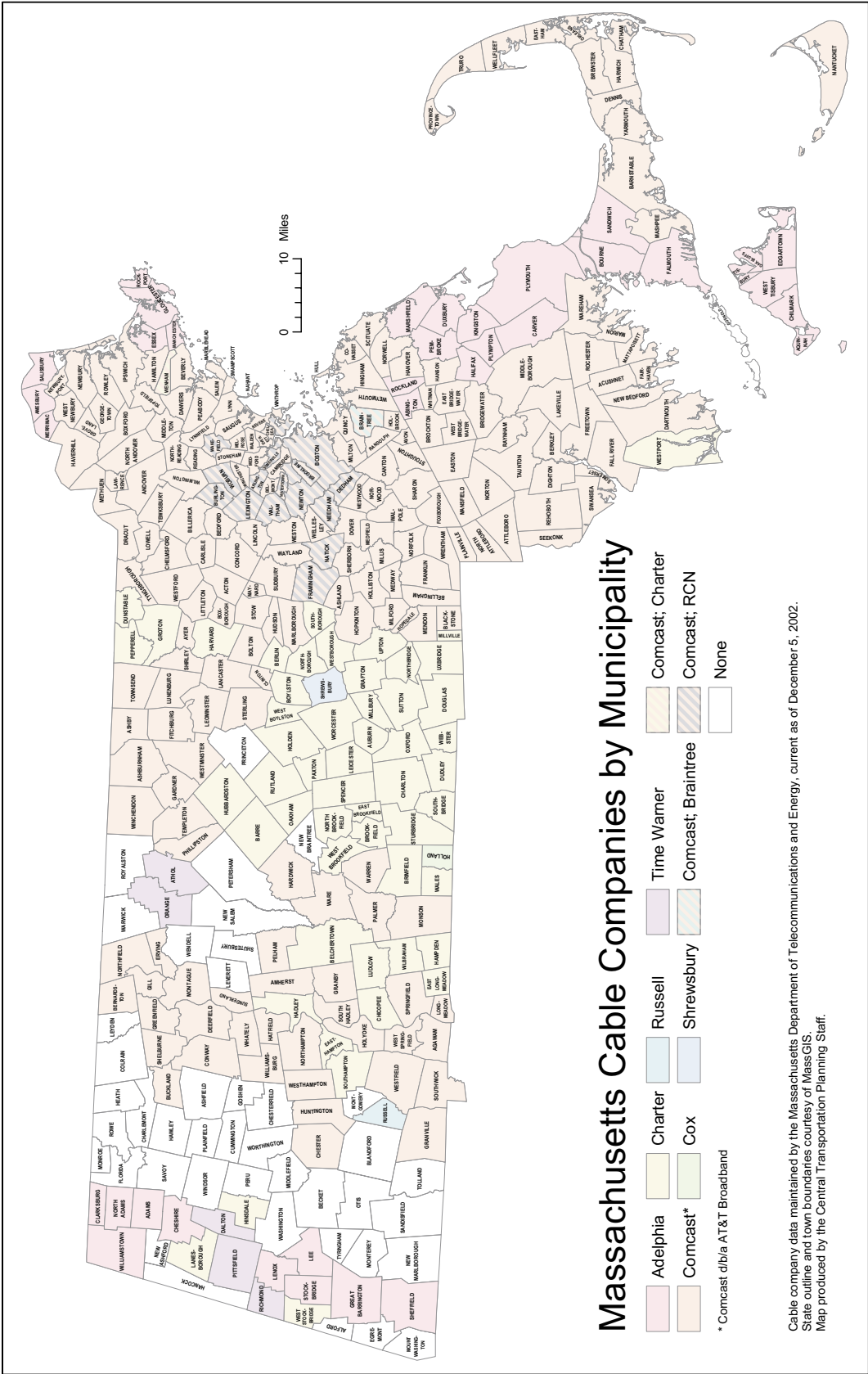
Consumer Protection and Education

The Cable Division, together with the Department's Consumer Division, investigates and resolves individual consumer complaints, either by informal negotiation between the consumer and the cable operator or by formal adjudicatory proceedings. The Cable Division also tracks patterns of complaints in order to identify and resolve more widespread problems.

The Cable Division has adopted regulations designed to afford cable subscribers consumer protections, particularly with respect to billing and termination of service. The Cable Division requires each cable operator to make annual filings to ensure compliance with these consumer protection regulations. Through dedicated telephone lines, published consumer information, fact sheets, and a consumer-friendly website, the Cable Division serves as a source of information for consumers seeking to understand the options available to them, particularly as competition and consolidation of cable operators increases across the Commonwealth.



The Cable Division regulates subscribers' rates in a majority of Massachusetts communities.



Cable company data maintained by the Massachusetts Department of Telecommunications and Energy, current as of December 5, 2002.
State outline and town boundaries courtesy of MassGIS.
Map produced by the Central Transportation Planning Staff.

Rates and Revenue Requirements Division

The Rates and Revenue Requirements Division is responsible for providing the technical expertise the Department needs to determine the appropriate levels of revenues, rates and charges for the seven investor-owned electric companies, nine investor-owned gas companies and twenty-five investor-owned water companies in the Commonwealth. The technical support provided by the Division includes expertise in economics, finance, accounting, and public policy.

The Rates Division staff assists the Department's Legal Division in developing the evidentiary record in adjudicatory proceedings concerning the rates or finances of the public natural gas, electric, and water companies doing business in Massachusetts. The Department's decisions in these proceedings are directly appealable to the Supreme Judicial Court under G.L. c. 25, §5.

The regulation of the natural gas, electric, and water industries requires the Division to:

- Review electric utility restructuring-related filings, including reconciliation of Standard Offer, Default, Transmission, and Transition costs and revenues; Default service and Standard Offer service procurement and billing; Securitization; Divestiture of generation assets; and power contracts;
- Review requests to change base rates through either cost of service regulation or performance-based regulation ("PBR");
- Review financing requests;
- Review service quality plans;
- Review mergers and acquisitions;
- Coordinate the assessment of electric and gas utilities;
- Review retail electric contracts;
- Review municipal streetlight purchase disputes; and
- Provide information and assistance to the public, press, industry, and other government agencies.

Division Responsibilities

Review of Electric Utility Restructuring-Related Filings

As part of the continued implementation of the 1997 Electric Restructuring Act, the Department annually conducts a reconciliation, or "true-up," for each electric company. Under the Restructuring Act, each electric distribution company may collect non-mitigatable, stranded or transition costs, through the mechanism of a transition charge. The Rates Division evaluates the costs and revenues each electric distribution company proposes to reconcile through the transition charge. The Division's analysis results in an Order that may require adjustments to the calculation of a company's transition charge in the following year. These adjustments are based on the Department's determination that a company has either over- or under-collected on its transition charge expenses.

The Rates and Revenue Requirements Division also reviews filings by each of the electric distribution compa-

nies seeking to reconcile the costs of providing Standard Offer, Default, and transmission service with collected revenues. The distribution companies are allowed dollar-for-dollar recovery for providing such services. The Rates Division must ensure that these rate changes comply with the rate reduction requirements of the Electric Restructuring Act.

Pursuant to the Electric Restructuring Act, the Rates Division also reviews generation service procurement filings, which relate to the procurement of Standard Offer Service and Default Service load by the electric distribution companies, and determining the price for these services. In addition, the Division reviews proposals from the electric companies to: securitize their fixed assets, obtain lower financing costs; divest their generation assets and purchased power contracts, mitigate their stranded costs; and resolve streetlight purchase disputes. In each of these cases, the Rates Division must ensure that the outcome conforms with the intent of the Electric Restructuring Act and each company's restructuring plan.

Rates and Revenue Requirements Division

Review of Requests to Change Base Rates

The Rates and Revenue Requirements Division follows general DTE practices in reviewing rate cases, which includes: reviewing initial filings; participating in informal technical conferences; issuing information requests; drafting pre-hearing memoranda for the Commission; cross-examining company and intervenor witnesses during hearings; developing and discussing with the Commission various options for resolution of issues; and preparing draft orders for Commission review.

Changes to base rates are based on either traditional cost of service regulation or PBR. To establish rates under PBR requires the determination of cost-of-service rates (using traditional cost of service regulation), industry productivity factors, inflation factors, and service quality measures.

For water utilities, the DTE's standard procedure for reviewing rate cases is not usually cost-effective, because the administrative costs of preparing and litigating a rate case for a small water company can equal or exceed the rate relief sought. To streamline the regulatory process for water companies, the DTE has created a Settlement Intervention Staff (SIS) that independently reviews rate requests and conducts off-the-record negotiations with water company officials and intervenors. The SIS has no direct communication with the Commission regarding pending cases. SIS and the other parties on the case may submit a proposed rate settlement to the Commission. The Commission may either approve it, return it to the settling parties with suggested modifications, or reject it, with or without subsequent evidentiary hearings. To date this process has saved the DTE, the companies, and the ratepayers considerable amounts of time, resources, and expenses.

Review of Financing Requests

The Rates and Revenue Requirements Division also is responsible for the review of financing cases. Financing cases relate to company proposals for the issuance of debt or equity securities. The primary focus in such cases is to carry out statutory mandates that require utilities to have sufficient net plant (*i.e.*, undepreciated assets in rate base) to ensure sound securities.

Review of Service Quality Plans

In an Order issued June 29, 2001 (D.T.E. 99-84), the Department established service quality standards for all electric and gas utilities. The Rates and Revenue Requirements Division reviewed the compliance filings filed by the electric and gas companies in response to the Order. In subsequent proceedings, the Rates and Revenue

Requirements Division will determine whether the electric and gas companies have met the service quality standards established in D.T.E. 99-84 and, if not, the penalties to be assessed.

Review of Mergers and Acquisitions

Pursuant to G.L. c. 164, § 96, the Rates and Revenue Requirements Division reviews all merger and acquisition proposals that are filed with the Department, to determine if they are in the best interest of ratepayers. This is accomplished by determining the proposals' effect on rates, service quality, net savings, competition, the financial integrity of the post merger entity, fairness in the distribution of resulting benefits between shareholders and ratepayers, societal costs such as job loss, and on economic development. The Division also analyzes alternatives to the merger.

Coordination of Annual Assessments

Pursuant to G.L. c. 25, § 18, electric, gas and telecommunications companies that do business in Massachusetts are subject to an annual assessment on a percentage of their intrastate revenues. The Rates and Revenue Requirements Division is responsible for gathering the revenue figures for the electric and gas utilities.

Review of Retail Electric Contracts

The Rates and Revenue Requirements Division also is responsible for the mandatory review of negotiated electric contracts between electric distribution companies and retail customers. Such contracts are evaluated to ensure consistency with DTE standards. The onset of competition in the electric utility industry has reduced the demand for electric contracts in recent years.

Public Information

Another important responsibility of the Rates Division is to provide timely and accurate information to the public regarding activities in the electric, gas, and water industries. This task requires working with other regulatory agencies, consumer groups, public interest groups, power suppliers, and utility companies to help them understand Department regulations and Department policies, and to develop agency regulations that address the changing circumstances in the utility industry. The changing circumstances include electric industry restructuring, gas unbundling, and new financial accounting standards. This task also requires working with the Department's Consumer Division on responses to consumer complaints and on drafting for the Commission recommended policy decisions concerning consumer issues.

Rates and Revenue Requirements Division

Precedent, Policies, and Practice

The DTE sets rates using cost-of-service pricing principles where electric, gas, and water rates are based upon the cost to serve various classes of ratepayers. Under cost-of-service pricing, the Rates Division reviews the costs incurred by utility companies, to determine the reasonableness of such costs and to determine whether they were prudently incurred. The categories of costs include company annual expenses, capital investments, and rates of return for shareholders (*i.e.*, the return on equity). Appropriate annual expenses, plus a return on undepreciated rate base (*i.e.*, a return on net capital investment) equals the company's "cost of service" or the "revenue requirement" upon which rate structures must be based.

Once the company's cost of service has been determined, a rate structure must be established that affords the company a reasonable opportunity to earn its allowed rate of return while meeting other policy goals. Rate structure is the level and pattern of prices that customers are charged for the use of utility services. A customer class' rate structure is a function of the cost of serving that rate class and the design

of rates calculated to cover that cost. The DTE's policy goals for utility rate structure are economic efficiency, continuity, fairness, earnings stability, and simplicity.

In attempting to balance these various policy goals, the Department has chosen to design rates for each customer class that collect revenues equal to the cost a company incurs in providing service to that class. In many cases, however, attaining all of the above-mentioned goals simultaneously is impracticable within a single rate proceeding, since some goals can be achieved only to the detriment of other goals. For example, the immediate implementation of cost-based rates where each customer class pays its fair apportionment of the costs incurred to serve them could cause the rates of certain classes to increase substantially, violating the goal of rate continuity, or the goal of having rate changes occur in a gradual fashion to avoid rate shock.



Economists and accountants review utility requests to change gas, electric, and water rates.

The Consumer Division is responsible for enforcing and monitoring compliance with Massachusetts laws and Department regulations protecting consumers of gas, electricity, telecommunications, water, and cable services. Over one thousand companies fall within the scope of the Division's regulatory authority, with the largest number in the telecommunications industry.

Fulfilling its statutory and regulatory responsibilities requires the Consumer Division to:

- Respond to 72,000 to 85,000 telephone inquiries annually from consumers;
- Investigate 11,000 to 12,000 complaints annually;
- Contact utility personnel on a regular basis, ordering widespread changes in billing practices or customer policy when necessary;
- Provide annual training for utility consumer representative managers;
- Conduct informal hearings and adjudicatory hearings;
- Approve bill notices and billing inserts;
- Gather and keep statistics for reporting and informational purposes; and
- Advise the Department on issues in pending cases affecting utility relations with customers.

Division Responsibilities

Responses to Consumer Inquiries

The Consumer Division's most important duty is to respond to the roughly 300 to 400 telephone calls it receives daily concerning utility and cable companies. Calls to the Division are categorized either as inquiries, for which information may be given, or complaints, for which cases are opened. Looking at the combined calls for the years 2000 and 2001, 86% of the calls were inquiries and 14% of the calls became cases.

The Division operates a call center management system which allows Division staff to provide direct personal attention to consumer inquiries and complaints, while also allowing for automated voice-activated assistance to those consumers who wish to reach their utility or cable company directly. The system allows consumers to state the name of the utility or cable company they wish to reach, to receive the phone number for the company, and to be automatically connected to the company. The new system has freed the Division's utility specialists to focus on calls requiring Division expertise.

Investigation and Resolution of Consumer Complaints

Every utility or cable complaint opened by the Consumer Division is investigated, and every investigation must be resolved before it can be closed. The Division handles

roughly 11,000 to 12,000 complaints annually. The Division receives most complaints by phone, but also receives them by mail and email. The majority of the complaints concern billing disputes, credit issues, or allegations of poor service. In those cases in which the utility company is found to be at fault, the Division will order the company to correct the problem and to make any necessary bill adjustments.

If a consumer or utility company is not satisfied with the resolution of a complaint filed with the Consumer Division, either party may request an informal hearing. Informal hearings for residential complaints are conducted by a regulatory specialist who serves as the hearing officer and issues a written decision. Parties unhappy with the informal decision may request a *de novo* adjudicatory hearing conducted by the Department's Legal Division.

Telecommunications "slamming" complaints have become a significant part of the Division's complaint resolution process. Slamming complaints allege that a consumer's phone carrier was switched without his or her authorization. In 1996, the FCC outlawed the switching of a consumer's telecommunications carrier without proper authorization. States have also prohibited the practice, either through their own statutes and rules, by adopting the FCC's rules prohibiting the practice or, like Massachusetts, through a combination of the two. In Massachusetts, consumers have 90 days from the date that they have written notice of a switch to file a complaint with the Consumer Division. Once consumers provide the supporting documentation, they may choose to have the complaint resolved

Consumer Division

informally, which most elect, or formally, which requires an adjudicatory hearing. With either selection, if the phone company is found to have switched the consumer's service without authorization, the consumer will receive a refund of the unauthorized charges.

Utility Compliance Training

To help increase compliance with Department regulations, the Consumer Division holds annual utility managers' meetings. At these meetings, the Division staff reviews regulations pertaining to billing, protections from shut-offs, policies on abatements, and other areas of consumer protection. Noncompliance with these regulations may require a company to issue a refund, resume service after a shut-off, or adjust a bill.

Review of Utility Bills and Notices

The Consumer Division is responsible for reviewing utility billing material and notices. The Division reviews bill format changes, bill inserts and notices, including rate change notices, as well as informational letters sent to consumers. The Division may recommend changes to notices, to ensure that consumers will understand the information provided.

Consumer Education

The Consumer Division staff periodically develops informational brochures on important subjects in the utility industry, such as electric deregulation and telecommunications slamming.

Compilation of Statistics

In its computer database, the Consumer Division maintains a record of each consumer complaint and inquiry. The complaint data include the name of the customer and the utility, the type of utility service, the nature of the complaint, whether the complaint resulted in a hearing, and whether an adjustment was made on the bill. The database also keeps track of additional data, including the number and category of calls by industry, company, and regulatory specialist investigating the call.

The Division generates monthly statistical reports for the Department which include cases, inquiries, and bill adjustment amounts per industry and their percentage increase or decrease in the previous twelve-month average. The reports compare companies using measures such as the number of residential complaints per 1000 customers, and the total number of complaints per month. The Division provides statistical information to the Department, utilities, government representatives and the media. The statistical complaint data compiled by the Division provides an important basis for determining whether fines should be levied against a utility for failure to meet required service quality benchmarks.



Consumer Division staff provides assistance to over 72,000 customers annually.

The Legal Division staff serves as the chief legal and policy advisor to the Commission and provides legal support to all divisions of the Department. Attorneys from the Legal Division preside over adjudicatory proceedings and conduct rulemakings. The Legal Division also serves as the Department's primary liaison with the Legislature, particularly the Committees on Government Regulations and Energy.

Division Responsibilities

Formal Adjudication

The Legal Division's primary duty is presiding over adjudicatory proceedings conducted under the Massachusetts Administrative Procedures Act (G.L. c. 30A) and the Department's procedural regulations (220 C.M.R. §1.00).

Adjudications are the formal determination of parties' rights through a quasi-judicial process. All parties – both the party filing the action and any interveners – are entitled to due process safeguards, meaning that the parties are entitled to adequate notice and the opportunity to be heard. Parties to the action have the right to present evidence, cross-examine witnesses, and receive a written decision by the Commission. Pursuant to G.L. c. 25, § 4, the Chairman of the Commission may delegate authority to an attorney from the Legal Division, known as the "Hearing Officer," to preside over Department adjudications.

Adjudicatory proceedings vary in complexity and may be divided into categories including:

- Utility rate-making;
- Review of utility long-range forecast and supply planning;
- Review of utility financial transactions (e.g., stock, bond and security issuances);
- Review of proposed utility mergers;
- Resolution of billing disputes between residential consumers and utilities;
- Review of proposed energy facility construction and siting (e.g., electric generation facilities and transmission lines); and
- Certification of common carriers to do business with the Commonwealth (e.g., telecommunications companies, truck companies, bus companies);

In conducting a formal adjudicatory proceeding, the Department generally holds two types of hearings: (1) a public hearing in the utility's service territory and (2) an evidentiary hearing conducted in the Department's Boston offices.

Public hearings are scheduled and publicized throughout the utility's service territory. These hearings, transcribed by a stenographer, are conducted during the evening, usually in an easily accessible public building, such as the Town Hall, and are usually presided over by a Commissioner. The public hearings afford local consumers the opportunity to learn more about the rate request, offer their input about the pending case, and comment on the practices of the utility. Residential and business customers are a valuable source of information to the Department in developing a case record.

Evidentiary hearings are conducted in a courtroom setting in the Department's Boston offices. These proceedings are also transcribed by a stenographer. The hearings are presided over by the Hearing Officer, with the active participation of the Department's technical staff. The technical staff participate by questioning witnesses to ensure that the record is accurate and complete.

While the adjudicatory process does not require adherence to all formal rules of evidence, the evidentiary hearing process follows many rules of civil procedure, and parties are almost always represented by counsel from the utility bar. Evidentiary hearings afford interveners the opportunity to question company witnesses. In many rate cases, the Attorney General of the Commonwealth is an intervener. Other interveners may include public interest organizations, the Commonwealth's Division of Energy Resources, and local consumer, business or neighborhood groups. Sometimes interveners put on a direct case with witnesses of their own.

The Department issues a Final Order at the conclusion of each adjudicatory proceeding, based on the evidence in the record. Pursuant to G.L. c. 25, § 5, the Department's Final Order is appealable directly to the Massachusetts Supreme Judicial Court without intermediate appellate review.

Informal Adjudication

For some matters that come before the Department, an alternative to formal adjudication is available.

Consumer Adjudicatory Proceedings

A "consumer adjudicatory" involves a complaint by an individual residential customer, usually regarding billing or termination of utility service. An informal hearing is con-

Legal Division

ducted by the Department's Consumer Division and a written decision is issued. If the Consumer Division's decision is appealed, a hearing officer is assigned to conduct a formal hearing pursuant to G.L. c. 30A.

Notice of Inquiry Proceedings

The Department issues a Notice of Inquiry (NOI) when the agency desires public input on a particular issue. Thus, NOIs are Department-initiated investigations that are neither formal adjudications nor rulemakings. The goal of the NOI is include broad input in the development of public policy. The Department derives authority to issue a NOI from G.L. c. 164 § 76.

Participants in an NOI proceeding file comments and may provide sworn testimony. However, participants are not cross examined and do not have appeal rights. The order issued at the close of the investigation is usually a general policy statement with guidelines for future actions by utilities or by the Department. The policy established through the NOI may be further developed in the future through company-specific adjudications.

Letter Orders

The Department may approve or reject certain types of filings through Letter Orders. The Commission also may use a Letter Order to issue an advisory ruling or to resolve a procedural issue. Letter Orders are less formal than a regular Order; do not receive a docket number; and contain less background information. Letter Orders are used for routine cases of little or no precedential value, and usually pertain to a single company.

Rulemakings

The Department conducts rulemakings pursuant to G.L. c. 30A, §§ 4-10 and 220 C.M.R. § 2.00, to adopt, amend or repeal regulations pertaining to the activities of all industries the Department is charged by statute with regulating. A rulemaking proceeding may involve simple procedural regulations or may address complex regulatory issues. The Department is required to provide public notice of a proposed rulemaking, and to allow an opportunity for public comment. After consideration of the public comment, the Department may issue final regulations. Any final regulation must be published in the Code of Massachusetts Regulations.



Legal Division attorneys preside over formal adjudicatory proceedings.

The Executive Division provides administrative support to the Department for management information systems, public relations, purchasing, accounts receivable and payable, payroll, personnel management and budget preparation and management. The Division also serves as liaison to the Office of Consumer Affairs & Business Regulation, the Fiscal Affairs and Human Resources Divisions in the Executive Office for Administration & Finance, and various jurisdictional legislative committees.

Budget

The Executive Division manages the Department's budget, which is funded almost entirely by assessments against electric, gas, telecommunications and cable companies under its jurisdiction. For Fiscal Year 2003 the Department's budget is \$11,909,239.

Budgetary Direct Appropriations	\$7,762,339
Transportation Division	621,854
Energy Facilities Siting	
Retained Revenue	75,000
Electric Restructuring Trust Fund	3,450,046
Total	\$11,909,239

Communications

The Division's Communications Director drafts and issues all press releases on behalf of the Department, responds to all media inquiries, and prepares speaking points and briefing materials for the Office of Consumer Affairs & Business Regulations and the Governor's Press Office.

Administration

The Administration section is responsible for noticing and advertising all departmental public hearings and meetings. In FY 2002, the Department conducted a total of 218 hearings. Although most hearings are held in the Department's South Station Offices, the Department, in keeping with efforts to improve outreach to the general public, conducted 19 public hearings in other locations throughout the state.

The Administration section also processes all docket filings and orders issued by the Commission and manages the records retention program for the Department. Many of our systems have been automated in recent years, as described in the section below.

Management Information Systems/Computer Services

Management Information Systems (MIS) is responsible for operation of the Department's information technology systems, telephone system and website. The Department uses a variety of technologies to disseminate information to the citizens of the Commonwealth, to Department staff, and to the utility companies that the Department regulates.

Management of the Department's Computer Network

Internally, the Department uses a Windows-based data network of 215 desktop computers, 45 laptop computers for field inspectors and traveling staff, and 20 connections for remote users. MIS is responsible for operating, maintaining, and upgrading the Department's computer network, as well as assisting and training Department staff in its use.

At the start of FY 2002, the Department joined the State's MassMail initiative and converted its network to Windows 2000, operating on both the desktops and servers. Microsoft's Windows 2000 architecture allows for better security for files and network folders as well as enhanced desktop security. Electronic security policies prohibiting users from making potentially harmful system configuration changes have reduced the number of system reconfigurations significantly.

Management of the Department's Website

MIS manages the Department's website, located at www.mass.gov/dpu. The website is continually updated to ensure that both staff and consumers can obtain information quickly and easily. In its latest effort to make the website more consumer-friendly, MIS recently installed a search engine with keyword searching, which enables users to locate information by topic. In addition, the Consumer Services section of the website was redesigned to allow for easier retrieval of utility company information.

On the Department website, consumers may browse, search, and download files and orders issued by the Commission, as well as search for items by docket number in the "Enhanced Fileroom". In addition, consumers may access lists of electric and telecommunications companies licensed to do business within Massachusetts, and can determine which utilities serve their communities. Consumers can obtain information about Department programs and initiatives such as electric restructuring, gas unbundling, and the Dig Safe law. Consumers also may file a complaint on-line, and may direct a question about utility service to the Department's Consumer Division.

The Department's website provides links to utility company and trade association websites, and to the websites of other state and federal agencies. These include: the

Executive Division

Massachusetts Division of Energy Resources, the Federal Communications Commission, the Federal Nuclear Regulatory Commission and the Federal Energy Regulatory Commission.

Management of the Department's Telephone System

The Department recently installed a new telephone system that provides consumers with quick access to utility company complaint centers through the use of voice recognition software. The new system can route calls directly from the Department to the utility company identified by the caller. The new software recognizes both English and Spanish.

Management of Other Technologies

Recent technological improvements implemented by MIS include a new sound system, projector and electronic white board for the Department's largest hearing room, which makes it possible for all persons in the room to hear the testimony of witnesses and view presentations. In addition, filings now can be downloaded directly into the electronic copies of case dockets. Finally, all laptops with a 15-pin serial port can connect to the Department's system and the electronic documents can be read, edited, and stored in a secured location on the Department's internal network. This system allows staff to view real-time pages of Internet websites as well.

Current projects include collaboration with the Office of Consumer Affairs and Business Regulation to simplify the license renewal process for all agencies. With funding from the Information Technology Division (ITD), the group has already completed the project assessment phase, and is currently working on a system prototype that will be run on the Mass.gov portal website and use the secure payment system.



Administration staff keeps track of thousands of legal documents.

**Department of
Telecommunications & Energy**

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